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LEAs and the Special Educational Needs Tribunal

Jennifer Evans

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INVESTOR IN PEOPLE

Published in November 1998
by the National Foundation for Educational Research,
The Mere, Upton Park, Slough, Berkshire SL1 2DQ

Registered Charity No. 313392
ISBN 0 7005 1502 0

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ACKNOWLEDGEMENTS

I would like to thank the research team: Chris Derrington, who was responsible for the research design, fieldwork and preliminary analysis of this research, and Mairi Ann Cullen and Shanee Barraclough, who contributed to the fieldwork and gave valuable feedback on the draft report.

Thanks also to Felicity Fletcher-Campbell for her helpful comments on the draft.

Special thanks must go to the LEA officers who gave up their time to talk to the researchers and to the parents and parent supporters who shared their experiences with me.

Chapter 1 — Introduction

Background – the operation of the SEN Tribunal

The Special Educational Needs Tribunal (SENT) was part of a package of measures concerning special education established by the Education Act 1993 and consolidated in the Education Act 1996. Concern about some of the anomalies created by the Education Reform Act 1988 (for example, the restricted rights of parents of children with statements with regard to school choice, compared with those of parents whose children did not have statements) and the unwieldy operation of the appeals system, which involved both local appeals and appeals to the Secretary of State for Education, led the Government to conclude that it should place pupils with special educational needs and their parents within the same framework of choice and accountability as all parents.

The Tribunal started operation in 1994 and a summary of its work has been reported annually to Parliament by the President of the Tribunal, Trevor Aldridge, QC (SENT, 1995,1996,1997). During the first three years of its operation, the work of the Tribunal grew substantially. The number of cases registered rose from 1,170 in 1994/5 to 2051 in 1996/7, representing a year-on-year rise of around 26 per cent. The President has commented that 'we do not yet seem to have reached the natural ceiling of demand' (SENT, 1997). He offered three explanations for the increase:

> *The rise may result from a wider knowledge of the Tribunal's role, from a greater dissatisfaction with Local Education Authority (LEA) decisions or from a continuing pressure on the resources available for making provision in this area.* (SENT 1997, p. 5)

Some LEAs, too, have been concerned about the rise in the number of Tribunal cases they have experienced and the impact this has had on their ability to plan their policy and resource allocation for special education. The House of Commons Select Committee Inquiry on the Working of the Code of Practice and the Tribunal (GB. Parliament. House of Commons. Education Committee, 1996) reported that:

> *There is a continuing tension between a Tribunal's decision, which is made 'in the interests of the child', and an LEA's allocation of resources to meet the needs of all children with special educational needs for whom it is responsible.*
>
> (GB. Parliament. House of Commons, Education Committee, 1996, p. viii).

This highlights another tension inherent in the current division of responsibility between schools and LEAs for meeting the needs of pupils with learning difficulties. In some instances, LEAs have delegated significant resources to schools through their local management of schools (LMS) formula to meet special educational needs, but, because this funding is not separately itemised or accounted for, schools have not necessarily used it for the purposes for which it was intended. In order to gain extra resources for special educational

needs, some schools have approached the LEA with a view to initiating a statutory assessment which the LEA has not agreed to and this has led to an appeal. As the Select Committee Report points out:

> *There is often disagreement about the difference between the money an LEA has allocated and the amount actually spent by the school. (LEAs can only monitor the use of delegated funds by schools.) Difficulties may arise because the Tribunal is holding the LEA to account for spending decisions which are the responsibility of the school governors.*
> (GB. Parliament. House of Commons, Education Committee, 1996, p. viii).

A detailed research study of the Special Educational Needs Tribunal was carried out by Prof. Neville Harris between 1994 and 1996 (Harris, 1997). This study focused on the operation of the Tribunal, and the key question which it addressed was:

> *...how effectively would [the Tribunal] provide access to justice for parents and children?* (Harris, 1997, p. 24)

The focus of Harris's research was the *process* of the Tribunal — Would the process be as informal as was hoped? How would the Tribunal balance the interests of individual children with the need of LEAs to keep within the limits of their resources and serve wider policy goals? Would Tribunals exercise independent judgement? Would parents be able to present their case adequately when faced with experienced LEA professional officers? Would the Tribunal impose delays which might be harmful to children's educational progress?

The conclusions of his research focused on the experiences of parents and whether the Tribunal had achieved its goal of providing a better means for parents to challenge LEA decisions. He concluded that, although there were still problems for parents, the Tribunal was an improvement on the appeals system that it replaced (Harris, 1997).

The President of the Tribunal, Trevor Aldridge, QC, also comments in his report (SENT, 1997) that:

> *The nature of the Tribunal is very different from the appeal processes which it replaced. It certainly took time for professionals in the field to become accustomed to a new way of working. However, initial uncertainty has been overcome, and the impartiality and relevant knowledge of Tribunal lay members have been widely acknowledged.*
> (SENT, 1997, p. 8)

However, there is an awareness in the President's report that questions have been raised about some aspects of the Tribunal's remit, and these are listed:

- should the Tribunal be obliged to take account of the LEA's overall SEN policy in deciding an appeal?
- when a parent expresses a preference for a maintained school outside their own LEA area, how can the Tribunal obtain full information about it?

- if a parent moves from one LEA area to another while an appeal is pending, should the new home LEA become a party to the appeal?
- if, while the parent is appealing against the contents of the statement, the LEA makes a new statement, should that appeal be cancelled?
- are the views of the child adequately presented to the Tribunal?
- how can we ensure that all parents, regardless of race or background, have equal access to the Tribunal?

(SENT, 1997, pp. 8–9)

Thus, it appears that there is an awareness of the issues which the existence and operation of the Tribunal present for LEAs and parents and a willingness on the part of those concerned with the Tribunal to address them.

The focus of the NFER study reported here was the operation of the Tribunal and its impact at LEA level. It addressed the concerns expressed by LEA officers about the impact of Tribunal decisions on the allocation of resources and the ability of LEAs to pursue policy goals in relation to special education.

The project was undertaken at the National Foundation for Educational Research (NFER) as part of its Membership Programme, funded by the Council for Local Education Authorities (CLEA).

The aim of the research was to explore the following questions:

- Why do parents appeal?
- What is the impact of appeals on LEAs?
- Are changes in policy initiated by the results of Tribunal cases?
- Has the Tribunal led to developments in provision?
- Are Tribunal cases useful as a system of monitoring and accountability?
- Why do some LEAs experience a much higher rate of appeals than others?

The research was carried out by means of a questionnaire to all LEAs in England and Wales, followed up by telephone interviews with officers in 44 of the 111 LEAs which responded. A number of more detailed studies were undertaken in 25 LEAs which had experienced significantly high or low levels of appeals or had experienced a particularly significant Tribunal case. In those LEAs, interviews were undertaken with LEA officers, Parent Partnership Officers (PPO) (or their equivalent) and parents who had experience of appealing to a Tribunal.

Nationally available data were also analysed to see if there are any national trends in appeals which can be related to LEAs' demographic profiles, their efficiency in carrying out the statutory assessment procedures, their spending on special educational needs or the overall levels of achievement in their schools.

Why a Special Educational Needs Tribunal?

From 1988 onwards, a series of Education Acts completely changed the organisation and funding basis of education in England and Wales — from a system which involved LEAs as the main policy makers and decision-takers about education, to one where central government control and school autonomy became key features. A series of administrations has: prescribed a curriculum and testing regime; instituted regular independent inspections, the results of which are widely disseminated; and given the major responsibility for spending decisions to schools. 'Parental choice' and 'open-enrolment' remain key components of this approach under the current Government, although the opportunity for schools to opt out of local authority control and become grant-maintained has been curtailed.

The legacy of Warnock — The Education Act 1981 and its consequences

The impact of recent Government policies on special education (both in special and mainstream schools) has been significant. Until the 1993 Act was passed, policy and practice regarding special education were governed by the Education Act 1981, implemented in 1983. This took its inspiration from the Warnock Report (1978), which recommended, among other things, a multi-professional assessment and recording of pupils' special educational needs and the participation of parents as 'partners' in all decisions regarding the education of their child with special educational needs. The Warnock Report also recommended that pupils with special educational needs should be educated, wherever feasible, in mainstream schools. This recommendation became interpreted by some parents and lobby groups as a call to end all segregation of pupils with special educational needs.

In response to the Warnock Report, the Education Act 1981 instituted a definition of special educational needs and provision which has given rise to many problems of interpretation (Goacher *et al.*, 1988; Audit Commission, 1992).

A child has special educational needs if he has a learning difficulty which calls for special educational provision to be made for him.

A child has a learning difficulty if

(a) he has significantly greater difficulty in learning than the majority of children of his age;

or

(b) he has a disability which prevents or hinders him from making use of educational facilities of a kind generally provided in schools within the area of the local authority concerned for children of his age;

or

(c) he is under the age of five and is, or would be if special educational provision were not made, likely to fall into (a) or (b) above.

Special educational provision means:

(a) educational provision which is additional to, or otherwise different from, the provision made generally for children of his age in schools maintained by the local authority concerned

or

(b) if the child is under two years old, educational provision of any kind.

The relativity and circularity of this definition (which is still current under the Education Act 1996) has resulted in numerous disputes between LEAs, professionals and parents, some of which have been subject to appeals.

The appeals system under the Education Act 1981

The appeals system set up under the Education Act 1981 was a two-tier system. Parents could appeal to an LEA appeals panel, constituted under the Education Act 1980 (which dealt mainly with school choice appeals). This appeals panel was not independent of the LEA since the majority of panel members were from the LEA, nor were the recommendations of local appeals panels binding on the LEA. If parents were not satisfied with a local appeals panel decision, they could appeal to the Secretary of State. Appeals were restricted to particular aspects of the statutory assessment procedures. Parents could appeal against the *provision* recommended for their child, but not against the *assessment* of needs as laid down in the statement. They could appeal against an LEA's refusal to issue a statement, once a child had been assessed under the statutory procedures, but only to the Secretary of State, not to the local panel. Thus, as Goacher *et al.* (1988) pointed out, only the most determined parents would be likely to carry an appeal through this two-stage process and the absence of appeals did not necessarily indicate that parents were satisfied with the outcome of the assessment process.

Increasingly, during the 1980s, parents became frustrated and disillusioned with the appeals procedure under the Education Act 1981 and resorted more often to seeking redress through the courts. Some high-profile court judgments had significant impact on LEAs' liability to make provision[1] (see also Denmam and Lunt, 1993).

[1] *For example, (1) Rv Lancashire County Council ex parte CM (a minor), which ruled that speech therapy was a special educational provision and therefore the LEA was liable to fund it; (2) Rv Secretary of State for Education ex parte E (a minor), which ruled that Part III of the statement of special educational needs must make provision for all the child's difficulties recorded in Part II.*

A more 'consumerist' approach to education, stimulated by the Education Reform Act 1988 and the production of Parent's Charters, exposed the disadvantaged position of parents of children with special educational needs when it came to making decisions about their child's education. A consultation paper published in 1992, entitled *Special Educational Needs: Access to the System* (GB. DFE, 1992), proposed a number of changes 'to give new rights to parents of children with special educational needs and to make the education system more responsive to their views and choices' (p. 1).

The consultation paper proposed legislation to:

- extend parents' rights over the choice of school;
- reduce the time taken by LEAs in making assessments and statements of special educational needs;
- make parents' rights of appeal more coherent and extend those rights;
- establish an independent tribunal which would replace the jurisdiction of both the Secretary of State and appeals committees under the Education Act 1981.

The legislation which embodied these proposals (the Education Act 1993) also brought into use the *Code of Practice on the Identification and Assessment of Special Educational Needs* (GB. DFE, 1994), which laid down in great detail how children with special educational needs were to be identified and assessed by schools, initially, and then, if necessary, by a multi-professional assessment carried out by the LEA to see if a statement was required.

The Tribunal is referred to several times in the Code of Practice, which sets out the parents' rights of appeal against LEA decisions and outlines good practice for LEAs in their interactions with parents at various stages of the assessment process.

> **The decision not to make a statutory assessment may be a severe disappointment to the child's parents and may also be unwelcome to the child's school. The LEA should therefore write to the school, as well as the child's parents, giving full reasons for their decision. Parents who have formally requested a statutory assessment under section 172 or 173 may appeal to the SEN Tribunal against a decision not to make such an assessment... If it is clear that there is a disagreement between the parents and the school about the child's progress and attainments at school, or about the need for a statutory assessment, the LEA might wish to arrange a meeting between the parents and the school** (para 3.96).

Thus, it is expected that the LEA and the school should maintain a dialogue with parents and that they should work together to demonstrate to the parents that their child's needs can be met without a statutory assessment. However, it has been suggested (Fletcher-Campbell, 1996) that schools and LEAs do not always agree about the need for an assessment and that, in some LEAs, schools are encouraging parents to press for an assessment in order to gain extra resources and that LEAs are claiming that schools already have resources in their budgets to meet the special educational needs of their pupils.

A similar point is made in the Code of Practice about the situation where an LEA has assessed a child and decided not to issue a statement.

> **The decision not to issue a statement may be disappointing to parents and seen as a denial of extra resources for their child** (para 4.17).

The Code suggests that, under these circumstances, the LEA might wish to issue a *note in lieu of a statement*, although it acknowledges that this might take up as much time as writing a statement. However, it would not commit the LEA to resourcing the special educational provision for the child.

Currently, 27 per cent of appeals are on the question of refusal by LEAs to make an assessment and 14 per cent on the question of refusal to issue a statement. Around 50 per cent are around the contents of the statement (SENT, 1997). The Code of Practice advises LEAs:

> **Recourse to the Tribunal will inevitably be stressful for parents and time-consuming for the LEA concerned. To minimise appeals to the Tribunal, LEAs should ensure that parents have the fullest possible access to information and support during the statutory assessment process and that they are fully involved in contributing to their child's statement** (para 4.69).

Thus, the good practice advocated by the Warnock Report (1978) of involving parents in the decisions taken about their child in the fullest way possible, is seen by the Code of Practice as enabling LEAs to minimise the numbers of appeals they experience. Nevertheless, it was seen as necessary by the then Government to tip the power balance away from the 'benevolent humanitarianism' (Tomlinson, 1982) of the Warnock model, where most of the decision-making power lay with the LEA and its professionals, towards a more assertive and consumerist role for parents, adjudicated by a special educational needs Tribunal independent of the LEA.

Chapter 2 — The National Picture

The SEN Tribunal sits in a number of regional venues across England and Wales. The statistics of cases brought and their outcomes are recorded for each LEA and are published in the Tribunal's Annual Report. An analysis of the statistics shows some interesting variations across the country. These have been somewhat complicated by the process of local government reorganisation between 1995 and 1997, so that year-on-year comparisons are difficult to make for some LEAs. In 1994/5, the first year of the operation of the Tribunal, 1,170 appeals were registered, and, of these, 523 (44 per cent) were later withdrawn by the parents. In 1995/6, 1,626 appeals were registered and a higher proportion (49 per cent, that is 796 appeals) were withdrawn. Around two per cent of appeals were struck out in both years.

The 1996/7 figures do not give the final outcome of appeals for that year, but 2,051 cases were registered, and by the time the report was published, 914 (44.5 per cent) had been withdrawn. So, in the first three years of the Tribunal's operation, a pattern seemed to be emerging, where over 40 per cent of appeals were settled between parents and LEAs before they reached the Tribunal, and a further two per cent of cases were not eligible, and were therefore struck out.

Table 2.1 Appeals registered, withdrawn and struck out 1994–1997

	1994/5	1995/6	1996/7
Appeals registered	1170	1626	2051
Appeals withdrawn	523	796	914
Appeals struck out	32	37	38

Source: SENT Annual Reports, 1994/5, 1995/6, 1996/7

In the first year of the Tribunal's operation, marked differences between LEAs in the incidence of appeals were evident. These differences appear to have been maintained in subsequent years. For example, some LEAs have had very high numbers of appeals registered as a proportion of their school population over the 1994–1997 period.

Table 2. 2 The ten LEAs with the highest average rate of appeals registered per 10,000 of the school population (excluding LEAs subject to local government reorganisation)

	1994/5	1995/6	1996/7	Average over 3 Years
Barnet	5.10	5.69	10.53	7.10
Camden	2.72	11.26	12.08	8.68
Ealing	5.31	9.10	4.56	6.32
East Sussex	5.24	6.77	7.27	6.42
Kensington & Chelsea	4.14	5.15	6.09	5.12
Kingston upon Thames	1.6	6.75	6.09	4.81
Lewisham	1.55	7.65	6.32	5.17
Merton	9.90	5.50	3.34	6.24
Richmond upon Thames	5.80	7.27	11.13	8.06
Wandsworth	8.82	6.15	8.18	7.71

Source: SENT Annual Reports, 1994/5, 1995/6, 1996/7

It is immediately apparent that, excluding three LEAs which have been subject to local government reorganisation (Cumbria, South Glamorgan and Humberside, which had similar starting points for numbers of appeals), at the inception of the Tribunal system, London boroughs were most likely to experience high numbers of appeals and this pattern has, on the whole, been maintained. However, there are also some London boroughs which have very low numbers of appeals, so the 'London factor' cannot be the only explanation for this phenomenon (see Table 2.3 below).

Table 2.3 The ten LEAs with the lowest average rate of appeals registered per 10,000 of the school population (excluding LEAs subject to local government reorganisation)

	1994/5	1995/6	1996/7	Average over 3 Years
Coventry	0.40	0.20	0.59	0.39
Durham	0.00	0.83	0.21	0.34
Gateshead	0.00	0.33	0.00	0.11
Knowsley	0.35	0.00	1.32	0.55
Oldham	0.24	0.00	0.47	0.23
Sandwell	0.00	0.76	0.19	0.31
South Tyneside	0.39	0.00	0.00	0.13
Sutton	0.00	1.54	0.00	0.51
Tower Hamlets	0.00	0.00	0.00	0.00
Wolverhampton	0.00	0.47	0.23	0.23

Source: SENT Annual Reports, 1994/5, 1995/6, 1996/7

On the whole, the LEAs with consistently low numbers of appeals appear to be the smaller metropolitan boroughs, with the exception of Durham (which has now been subject to reorganisation). As can be seen, two of these, Sutton and Tower Hamlets do not conform to the general London pattern of a high number of appeals.

This report does not assume that a high or a low rate of appeals is an indicator of either good or bad policies or provision for special educational needs. The following analyses will demonstrate that there a number of complex and interrelated factors which might predispose an LEA to experience a high or a low rate of appeals to the Special Educational Needs Tribunal.

Regional variations

When the Tribunal statistics for 1996/7 are analysed by region and type of authority, the following differences emerge:

- The London boroughs (both inner and outer) had the highest average level of appeals per 10,000. The average for inner London was 4.55 (4.9 if the City of London, which consists of only one primary school, is excluded). The average for outer London was 4.15. The range for inner London was from zero to 12.08 per 10,000 pupils and for outer London, from zero to 11.13 per 10,000. Thus there are wide variations within the London boroughs.

Table 2.4 Appeals in inner-London boroughs, 1996/7

LEA	Number of Appeals	Appeals per 10,000 pupils
City of London	0	0.0
Camden	27	12.08
Greenwich	13	3.61
Hackney	8	3.08
Hammersmith & Fulham	5	3.15
Islington	9	3.72
Kensington & Chelsea	6	6.09
Lambeth	23	8.73
Lewisham	21	6.32
Southwark	6	1.84
Tower Hamlets	0	0.0
Wandsworth	23	8.18
Westminster	4	2.31

Source: SENT Annual Report 1996/7

Table 2.5 Appeals in outer-London boroughs, 1996/7

LEA	Number of Appeals	Appeals per 10,000 pupils
Barking & Dagenham	2	0.72
Barnet	47	10.53
Bexley	14	3.78
Brent	12	3.38
Bromley	6	1.42
Croydon	0	4.39
Ealing	19	4.56
Enfield	18	4.04
Haringey	16	5.05
Harrow	15	5.25
Havering	2	0.56
Hillingdon	14	3.78
Hounslow	13	3.67
Kingston upon Thames	12	6.09
Merton	8	3.34
Newham	27	6.21
Redbridge	13	3.48
Richmond upon Thames	22	11.13
Sutton	0	0.0
Waltham Forest	6	1.78

Source: SENT Annual Report 1996/7

- The two regions with the lowest rate of appeals were the metropolitan boroughs in the West Midlands and in Tyne and Wear. The average number of appeals per 10,000 pupils in these two areas was 1.45 and 1.53 respectively, and the range was from 0.19 to 4.18 in the West Midlands and from 0.20 to 5.02 on Tyneside. In the West Midlands, Solihull (4.18) and Dudley (3.2) stand out as having a significantly higher rate of appeals than other authorities in the region, none of which have more than one appeal per 10,000. In Tyne and Wear, North Tyneside (5.02) and Newcastle (2.47) stand in contrast to the other three LEAs, two of which have none and one which has 0.2 per 10,000.

Table 2.6 Appeals in West Midlands LEAs, 1996/7

LEA	Number of Appeals	Appeals per 10,000 pupils
Birmingham	14	0.78
Coventry	3	0.59
Dudley	16	3.2
Sandwell	1	0.19
Solihull	15	4.18
Walsall	5	1.02
Wolverhampton	1	0.23

Source: SENT Annual Report 1996/7

Table 2.7 Appeals in Tyne and Wear, 1996/7

LEA	Number of Appeals	Appeals per 10,000 pupils
Newcastle upon Tyne	10	2.47
North Tyneside	16	5.02
South Tyneside	0	0
Sunderland	1	0.2

Source: SENT Annual Reports 1996/7

- The metropolitan boroughs in the North West, Merseyside and the North had the same average number of appeals — 2.3 per 10,000, with a range for the North West of 0.65 – 7.33 and in the North of 0.20 – 4.41. Three LEAs in the North West and Merseyside had significantly higher numbers of appeals registered — these were: Sefton (4.98), Wirral (7.33) and Bury (4.81). In the Northern metropolitan authorities, Rotherham (4.41) was significantly above average and Barnsley (0.29) significantly below. However, the Rotherham figure may be misleading, since, in the previous year, there were only 0.67 appeals per 10,000 in the borough.

Table 2.8 Appeals on Merseyside, the North West and the North, 1996/7

LEA	Number of Appeals	Appeals per 10,000 pupils
Knowsley	4	1.32
Liverpool	24	2.88
St Helens	2	0.66
Sefton	24	4.98
Wirral	41	7.33
Bolton	3	0.65
Bury	14	4.81
Manchester	12	1.7
Oldham	2	0.47
Rochdale	10	2.78
Salford	6	1.65
Stockport	3	0.7
Tameside	9	2.34
Trafford	6	1.72
Wigan	5	0.98
Barnsley	1	0.29
Doncaster	8	1.51
Rotherham	20	4.41
Sheffield	18	2.42
Bradford	29	3.24
Calderdale	7	2.03
Kirklees	13	2.02
Leeds	34	2.91
Wakefield	12	2.27

Source: SENT Annual Report 1996/7

- The picture in Wales is complicated by the effects of local government reorganisation, which has left no Welsh local authorities unchanged. The average number of appeals registered for Wales in 1996/7 was 1.73 per 10,000 and the range was from zero to 4.72. However, it is too soon to begin to see any pattern emerging and it would be difficult to disentangle the historical factors which have led to a high rate of appeals in some of the Welsh LEAs and a zero rate in others.

Table 2.9 Appeals in Welsh authorities, 1996/7

LEA	Number of Appeals	Appeals per 10,000 pupils
Isle of Anglesey	0	0.0
Gwynedd	2	1.13
Conwy	3	1.87
Denbighshire	2	1.27
Flintshire	0	0.0
Wrexham	4	1.98
Powys	4	2.02
Ceredigion	1	0.93
Pembrokeshire	3	1.58
Carmarthenshire	9	3.23
Swansea	8	2.07
Neath Port Talbot	0	0.0
Bridgend	3	1.32
Vale of Glamorgan	4	1.93
Rhondda Cynon Taff	1	0.23
Merthyr Tydfil	0	0.0
Caerphilly	0	0.0
Blaenau Gwent	4	3.24
Torfaen	8	4.7
Monmouthshire	6	4.72
Newport	10	4.05
Cardiff	10	1.94

Source: SENT Annual Report 1996/7

- There are also a number of new unitary authorities, which were created by the break-up of some of the English shire counties, and again it would be difficult to detect any emerging trends at this stage. The average number of appeals in the new unitaries was 2.51 per 10,000, which is similar to that of the remaining shire counties (2.45 per 10,000). The range in the new unitaries was from zero to 6.8 per 10,000, and in the shires was from 0.21 to 7.27. It would appear that, if a former shire county had a relatively high number of appeals, this was initially reflected in the number of appeals in the new unitaries. For example, parts of the former Avon LEA had high numbers of appeals — Bath and NE Somerset (4.9), Bristol City (3.32), South Gloucestershire (5.08) — as did parts of the old Humberside — East Riding (6.8), NE Lincolnshire (3.57), North Yorkshire (3.12).

Table 2.10 Appeals in the new unitary authorities, 1996/7

LEA	Number of Appeals	Appeals per 10,000 pupils
Bath and NE Somerset	12	4.9
Bristol City	17	3.32
North Somerset	19	5.08
South Gloucestershire	19	5.08
Hartlepool	0	0.0
Middlesborough	1	0.37
Redcar & Cleveland	0	0.0
Stockton on Tees	1	0.3
Kingston upon Hull	34	4.04
East Riding of Yorkshire	30	6.8
North East Lincolnshire	17	3.57
North Lincolnshire	3	1.04
North Yorkshire	8	3.12
York	3	1.23

Source: SENT Annual Report 1996/7

- However, the issue is not clear-cut, since some of the old shire authorities were not completely dismembered, but had parts taken out of them (for example, Dorset lost Poole and Bournemouth and Hampshire lost Portsmouth and Southampton). Thus, although these counties have kept their names, they are somewhat different from their former arrangement, and changes in the rate of appeals may reflect this. The rate of appeals in East Sussex has remained high since reorganisation (7.27 per 10,000). Two other shire counties with high rates (Dorset 5.22 per 10,000) and Lincolnshire (5.26) have seen a large increase since the formation of the new authority.

Table 2.11 Appeals in shire authorities, 1996/7

LEA	Number of Appeals	Appeals per 10,000 pupils
Bedfordshire	28	3.05
Buckinghamshire	19	1.81
Derbyshire	12	0.81
Dorset	48	5.22
Durham	2	0.21
East Sussex	67	7.27
Hampshire	47	2.07
Leicestershire	27	1.86
Staffordshire	16	0.94
Wiltshire	13	1.49
Cambridgeshire	35	3.37
Cheshire	55	3.46
Devon	26	1.77
Essex	101	4.36
Kent	67	2.76
Lancashire	21	0.94
Nottinghamshire	13	0.80
Shropshire	7	1.09
Berkshire	26	2.26
Cornwall	18	2.52
Cumbria	28	3.66
Gloucestershire	24	2.94
Hereford & Worcestershire	37	3.67
Hertfordshire	20	1.23
Isle of Wight	3	1.62
Lincolnshire	49	5.26
Norfolk	17	1.58
Northamptonshire	19	1.89
Northumberland	7	1.34
Oxfordshire	15	1.85
Somerset	15	2.23
Suffolk	19	1.96
Surrey	60	4.62
Warwickshire	11	1.47
West Sussex	28	2.85

Source: SENT Annual Reports 1996/7

Summary

The overall national rate of appeals to the Tribunal was 2.55 per 10,000 pupils in 1996/7. This conceals wide regional variations, as well as variations within regions. The current picture is in a state of flux because of local government reorganisation, and this makes it difficult to generalise about the incidence of appeals. However, the variations between LEAs are striking and call for some analysis and explanation. This is offered in the next section of the report.

Chapter 3 – Factors which Might Affect Levels of Appeals

Structural explanations for differences in levels of appeals[1]

Does socio-economic status influence the rate of appeals?

It is a common perception that professional middle-class and more affluent parents are more likely to appeal to the Tribunal (GB. Parliament. House of Commons, Education Committee, 1996; Harris, 1997). However, when the incidence of appeals is plotted against the percentage of pupils eligible for free school meals, no clear trend emerges. Some LEAs with a very high incidence of social deprivation (as measured by entitlement to free school meals), also have a high rate of appeals. For example, Camden and Kensington and Chelsea in the London area, and East Sussex all have above average proportions of pupils eligible for free school meals, compared with other LEAs in their region, but also a high number of appeals. Conversely, the London Borough of Sutton has a low proportion of pupils eligible for free school meals, but also a low number of appeals, and Stockport also has a low proportion on free school meals compared with its regional average, but low numbers of appeals.

There are, of course, regional variations in the proportions of pupils eligible for free school meals, the inner-London boroughs, Merseyside and Tyneside being areas with above average levels, and the eastern and southern parts of the country (East Midlands, East, South East and South West) having much lower levels. However, even within each region, although there is a slight trend for the more affluent LEAs to experience more appeals, exceptions can still be found. Thus, although one can point to LEAs where the theory of 'middle-class activism' appears to have some validity in explaining high numbers of appeals, it is not the whole story and is certainly not a national trend.

The converse of this argument is that LEAs which have very low numbers of appeals are those with highly deprived and marginalised populations who find it difficult to challenge LEA decisions and do not actively participate in the process of identification and assessment of their child's needs. Again there is a slight trend in this direction, but it is not that strong, and there are exceptions. For example, in London, the most deprived borough as measured by the proportion of pupils taking free school meals (Tower Hamlets) had had no appeals up to 1997, but the next most deprived borough (Hackney) had eight appeals registered in 1996/7 and eight heard the previous year — a rate of 3.08 per 10,000 pupils. This is below the London average, but above the national

[1] *The data with which these analyses have been carried out are published by the Department for Education and Employment (GB. DfEE, 1998a).*

average. In each region, LEAs can be found which fit the pattern of high deprivation and low appeals, but also LEAs which go against this trend. Thus, there is no clear relationship between levels of affluence or deprivation in an LEA and levels of appeals to the SEN Tribunal.

Are appeals less likely in LEAs with high proportions of parents for whom English is not their first language?

It has been suggested (Harris, 1997; SENT, 1997; Wolfendale and Cook, 1997) that some LEAs have relatively low rates of appeals because parents of children with special educational needs who do not have English as their first language do not find it easy to challenge the local authority's decisions. This may, of course, also be linked to rates of social deprivation and its impact on the marginalisation of certain groups. Again, there is no clear trend here. In some regions, such as the North West, high proportions of pupils for whom English is a second language occur in LEAs with low numbers of appeals (Manchester (1.7 per 10,000) and Oldham (0.47 per 10,000)), but another LEA with similar proportions has a much higher rate of appeals (Rochdale (2.78 per 10,000)). A similar trend is seen in other areas: Birmingham and Sandwell have a high proportion of pupils for whom English is a second language, and also have low numbers of appeals (0.78 and 0.19 per 10,000 respectively). However, this pattern does not hold for Bradford, which has the highest proportion of pupils for whom English is a second language in its region, but is above average on numbers of appeals. Neither does it hold for London, where Tower Hamlets does fit the pattern, but Newham, Kensington and Chelsea and Haringey, for example, do not. The Tribunal Report for 1996/7 cautions against drawing any conclusions from its own ethnic monitoring exercise, which shows the numbers of appeals from Bangladeshi, African, Pakistani, and Indian parents to be extremely small. No direct link between ethnicity and use of the appeals system can be established. Nevertheless, it would appear that individual authorities with high populations of speakers of other languages need to find ways of addressing this issue in order to ensure that parents can participate fully in the decisions made about their children.

Are appeals more likely in more 'market-orientated' LEAs?

Another explanation for a high rate of appeals in some LEAs is that in the new 'marketised' culture of schooling, parents are tending to act more as 'critical consumers' (Gross, 1996; Riddell *et al*, 1994; Evans and Vincent, 1997). They are therefore more likely to be assertive with the LEA and pursue what they see as their child's entitlement to the best education to meet his or her needs, to the extent of challenging the LEA's decisions through appeals to the Tribunal.

One indicator of a 'market' approach by schools and parents is the proportion of grant-maintained (GM) schools in the LEA. One could argue that, in LEAs with a higher number of GM schools, parents and schools are less attached to the LEA and more likely to view education as a 'commodity' which can be obtained by putting pressure on the LEA to release more resources. There is,

it could be argued, less of a 'community' approach to provision and a more individualised concept of educational entitlement in LEAs with high numbers of GM schools. Again there appears to be no strong trend to confirm this thesis, although there appears to be a slight tendency in this direction.

Overall, there is still a significant proportion of LEAs (around one-third) who have no GM secondary schools, and a bigger proportion (almost a half) who have no GM primary schools. However, the rate of appeals in these 'non-GM' LEAs ranges from none to over ten per 10,000. Conversely, there are some LEAs with high proportions of GM schools which have low numbers of appeals. However, when one takes account of these exceptions, there is a slight trend towards more appeals in LEAs with greater numbers of GM schools.

Overview of structural explanations for level of Tribunal appeals

Having reviewed a number of factors which are often given as explanations for differing levels of appeals across LEAs, it is not possible to discern any clear associations. For every LEA which seems to follow a predicted trend, there are a number which buck the trend. It seems that there are a number of interrelated structural factors which might predispose an LEA to a higher or lower level of appeals, but that the LEA's own policies and processes around the identification, assessment and provision for special educational needs will be a major influence.

Performance indicators and levels of appeals[2]

Statement levels and appeals to the Tribunal

There is likely to be a complex relationship between levels of statement production and levels of appeals. It may be that LEAs have increased statement levels to avoid appeals. Or it may be that high statement levels reflect a high level of SEN in an area, or a lack of provision at Stages 1–3 of the Code of Practice. LEAs which produce high levels of statements also produce a greater population of parents who might potentially appeal (that is to say, apart from appeals against refusal to assess). LEAs with lower levels of statements do not provide so many 'opportunities' for parents to appeal since the majority of appeals arise out of the statutory assessment procedures.

High levels of appeals might also be associated with an LEA's attempts to reduce the level of statements or to change its policy to provide more placements in mainstream schools, so that they might be seen as a reaction against this from parents whose expectations were set by previous policies and practices in an LEA. For example, the setting up of new unitary authorities has given some LEAs an opportunity to change the culture of the LEA, but this may have provoked a negative reaction from parents and parent groups which may

[2] *The data upon which the analyses have been carried out are those produced by the DfEE (1998b) and the Audit Commission (1998).*

have resulted in increases in appeals, in the short term. Some of these issues will be explored further in later chapters of the report which analyse a number of case studies of LEAs.

The current average percentage of pupils with statements in English LEAs (1997 figures) is 2.9 per cent. As noted in the *Statistical Bulletin* (GB. DfEE 1998b), this represents an increase of 46 per cent since 1992, and a year-on-year increase of 3.2 per cent. Within this average, there are wide variations. Among the lowest are Nottinghamshire (1.2 per cent), Kensington and Chelsea (1.3 per cent), Barnet (1.7 per cent), Richmond-upon-Thames (1.8 per cent), Croydon (1.8 per cent), Dudley (1.9 per cent), Salford (1.8 per cent) and Redcar and Cleveland (1.9 per cent). Of these, Kensington and Chelsea, Barnet, Richmond-upon-Thames and Dudley have above-average rates of appeals to the Tribunal compared with other LEAs in their region. Nottinghamshire, Redcar and Cleveland, Salford and Croydon have below-average rates.

Among LEAs with high statement rates, there does seem to be some association between this and lower rates of appeals. Of the 12 LEAs with statement rates over 3.5 per cent, 11 have average- or below-average rates of appeals to the Tribunal. Thus, if, as it is claimed, parental pressure and a wish to avoid appeals to the Tribunal are leading to higher rates of statements in LEAs, it may be difficult for LEAs to reduce their statement rates in line with the Green Paper (GB. Parliament. House of Commons, 1997a) expectations without, at least in the short run, generating a higher level of appeals to the Tribunal.

Efficiency of procedures and rate of appeals

The Audit Commission has produced a series of performance indicators for local authorities, which include indicators for education services (Audit Commission, 1998). One of the indicators of a council's efficiency and responsiveness to parents is the percentage of draft statements of special educational needs issued within 18 weeks. As the Audit Commission comments:

> *Parents of children in these* [poorly performing] *council areas will rightly question why they are receiving such a poor service — waiting to see how a council intends to address a child's special educational needs can be stressful and worrying* (p. 36).

> *The Audit Commission found that 'poorly performing councils did not have a significantly greater workload than other councils in terms of the number of statements they processed, nor did they show any significant increases in workload over previous years'.*
>
> (Audit Commission, op.cit., p.36)

The poorest performers, in terms of meeting the time frame for the production of draft statements, were Lambeth, Hillingdon and Richmond-upon-Thames, in the London area; Barnsley, Sandwell and Sefton, among the metropolitan authorities; and, among the county councils, only Shropshire was as low as any of these. Of these, Lambeth, Richmond-upon-Thames and Sefton had a

high level of appeals to the Tribunal, whereas the other LEAs had low levels of appeals. Overall, there does not seem to be any direct correspondence between the time taken to produce draft statements and appeals to the Tribunal.

Pupil achievement and appeals to the Tribunal

Another of the Audit Commission's performance indicators is the proportion of pupils obtaining A–C grade GCSEs. It is acknowledged that this is also highly correlated with the level of deprivation or affluence in an area, and thus does not give a complete picture of the standard of general educational provision in an LEA. In fact, as the Audit Commission report points out, there are some LEAs in affluent areas whose results are no better than those in highly deprived boroughs. For example, results in Lincolnshire, one of the 15 least deprived councils, are similar to those in Camden, one of the 15 most deprived. Interestingly, both Lincolnshire and Camden have a high level of appeals to the Tribunal, as do many of the relatively 'high-achieving' LEAs. Among the London LEAs, the five highest-achieving boroughs, as measured by five or more A–C GCSE grades, also have relatively high levels of appeals.

Among the metropolitan councils, three LEAs, in the top five for GCSEs, have high levels of appeals, whereas the other two members of this group have low levels. The top five LEAs for GCSEs among the county councils are: Buckinghamshire (below-average appeals); North Yorkshire (above-average); Dorset (above-average); West Sussex (slightly above-average); and Cornwall (average). On the whole, it appears that, in LEAs which have higher levels of academic achievement, there is a greater tendency for parents to appeal to the Tribunal. This may be due to the focus in schools in those LEAs on high-achieving pupils, which leads to less attention being paid to pupils with special educational needs. It might also be due to the social composition of the area, with parents who are more likely to challenge LEA decisions.

Spending per pupil and rate of appeals

It has been suggested that larger classes and lower spending per pupil might lead to a greater incidence of special educational needs and more pressure from parents for extra resources, which might eventually lead to an appeal because of lack of provision. One trend which has emerged from the Audit Commission analysis is that spending per pupil has dropped overall by £44 per primary and £110 per secondary pupil between 1993/4 and 1996/7 (when adjusted for inflation).

Again, no clear pattern emerges from an analysis of LEA spending on mainstream education. The highest-spending county councils at the secondary level also have among the highest levels of appeals. So also do some of the lower-spending at this level and some of the average spenders. A similar pattern occurs within the metropolitan authorities and the London boroughs and at the primary level.

Spending on special educational needs support, both at the pre- and post-statement stages, might also be a factor. However, data at this level of detail are not yet publicly available, although they are being collected by the Audit Commission.

Rate of permanent exclusions from school and level of appeals

Much concern has been expressed by the Government and others about the number of pupils in the UK who are currently excluded from school. This number has been rising in recent years, and, in 1995/6, 12, 476 children (0.17 per cent of the school population) were permanently excluded from school (GB. DfEE, 1998a). The rate in the special school population (0.54 per cent) was much higher than that in mainstream primary and secondary schools. A number of explanations for the increase have been given and many commentators agree that the increased rate of exclusions is related to the increased pressures on schools to achieve good exam results and OFSTED inspection reports, and a decreased tolerance in schools of pupils with challenging behaviour (Kinder *et al.*, 1997; Parsons, 1996).

High rates of exclusion could, therefore, be interpreted as a sign of increased stress and pressure within schools in a local area and might be related to provision for pupils with behavioural difficulties and thus to access to special educational assessment and provision. A surprising finding, when exclusion rates are plotted against appeals to the Tribunal, is that LEAs which are above-average on exclusions tend to be those with a low rate of appeals. For example, the highest rate of exclusions in the North East in 1995/6 was in South Tyneside, which had no Tribunal appeals in 1995/6 or 1996/7. A similar trend is seen in the North West, where the highest rate of exclusions was in Manchester, which has a below-average rate of Tribunal appeals. In Yorkshire and Humberside, the highest rate of exclusions was in Doncaster, which was below-average on Tribunal appeals. In the West Midlands, the two LEAs with the lowest rate of exclusions had the highest rate of appeals to the Tribunal. This also appeared to be a trend in other regions. For example, among the outer-London boroughs, those with low levels of exclusion were also more likely to be those with high levels of appeals to the Tribunal and vice versa.

Exceptions to this trend were Richmond-on-Thames, Croydon and Brent, which were high on both measures, and also had very high rates of exclusion from their special schools.

One could argue that schools under pressure take one of two routes to manage their populations of children who are harder to teach — either they attempt to gain extra resources or a relocation of the problematic children through the statutory assessment procedures, or, if that avenue is closed to them, they use exclusion to resolve their problems. Thus, a low level of statements coupled with a high level of *either* appeals to the Tribunal *or* exclusions from school may be an indication that children's needs are not being met within the school system, and that these two phenomena act as safety valves, releasing pressure from the system.

Explaining differences in levels of appeals

The preceding analysis has indicated that there is an extremely complex relationship between structural factors and LEA policies and procedures which might influence the levels of appeals to the SEN Tribunal. No clear trends emerge from national data which might lead to an understanding of why some LEAs have a much greater rate of appeals than others. Several common hypotheses have been tested using official statistics of national trends but although each has been confirmed in some LEAs, the opposite trend can be seen in others. These hypotheses and the data which were used to test them are summarised below.

- **Appeals are a 'white middle-class phenomenon'**
  Using data on free school meals and English as a second language, there appeared to be a slight indication that this is the case, but there are a number of exceptions to this trend. Some LEAs which are 'statistical neighbours',[3] and thus similar on a range of characteristics concerned with socio-economic status, have similar levels of appeals — for example Richmond-on-Thames, Kingston-upon-Thames and Barnet (high levels) — but other statistical neighbours in that group — Sutton and Bromley — have low levels of appeals. The nearest statistical neighbours to Dudley, which has a high level of appeals, are Wigan (low) and Bury (high).

  It could be argued that within LEAs, it is likely to be the more articulate middle-class parents who appeal, but the evidence for that is not clear-cut. Harris (1997) reports that, although the majority of children with special educational needs belong to social classes C2–E, the parents who responded to his questionnaire about the SEN Tribunal were equally divided between A–C1 and C2–E. As he comments, this may be because middle-class people are more likely to respond to questionnaires, but also it might indicate that more middle-class parents than working-class parents are using the Tribunal.

- **Appeals are related to the efficiency of LEAs' assessment procedures**
  Using data on the proportion of draft statements produced within 18 weeks, there appeared to be no relationship between the efficiency of an LEA's procedures (at this stage at least) and level of appeals to the Tribunal. However, there may be other factors, such as the length of time which parents wait for the LEA to agree to assessment (or the actions of 'gatekeepers' in preventing children from accessing the system of referral), which may be influencing the rate of appeals. This is explored in more detail in the case studies, later in this report.

- **Appeals are related to the overall quality of education in the LEA**
  Using proportions of pupils gaining five A*–C grade GCSEs as a measure of the quality of education, it appeared that there are more appeals in LEAs with better results at GCSE (but this may be related to the overall

[3] *Statistical neighbours have been calculated by OFSTED using a combination of indicators relating to: income, wealth and employment; large families; overcrowding; mobility; parental education; ethnic minorities; geography; and size.*

social composition of the LEA). There are a number of other measures which could be used to assess the quality of education in an LEA, but this is a very complex issue, and one related not only to outcome measures (such as five A*–C grades, which is, of itself, a very crude measure) but also to inputs such as class size, teacher expertise and funding (see below).

- **Appeals are related to the level of spending on schools**
  It has been suggested (Fish and Evans, 1995) that the level of spending on schools generally (and thus the level of provision available for *all* children in schools) will have an influence on the quality of education provided in schools and thus the levels of SEN. In LEAs which spend more on schools, there are likely to be fewer appeals, because pupils' needs will be met by the schools' own provision. However, there is no clear evidence that this is the case, although this is a complex picture. Some LEAs have retained central funding for a high level of SEN support at stages 1–3 of the Code of Practice, and therefore appear to be giving less to schools, but are nevertheless providing for pupils with special educational needs. Other LEAs have delegated large amounts of funding to schools for pupils with special educational needs, but schools have not used the funding for the purpose for which it was intended, and therefore there has been pressure from schools for LEAs to produce statements (Fletcher-Campbell and Cullen, 1998).

- **Appeals are an indication of a 'marketised' culture within LEAs**
  The proportion of GM schools in an LEA could be a measure of a 'market' culture in the area, and thus of a tendency for parents to be more vigorous in pursuing their right to make choices about their child's education. For parents of children with special educational needs, this might mean that they would be more likely to challenge LEA decisions through the Tribunal system. There does appear to be a slight trend in this direction, but there are exceptions, and since there are a number of LEAs which have very few or no GM schools, but which have a high rate of appeals, it is not possible to isolate this as a key factor.

This chapter has explored some commonly expressed hypotheses about the rate of appeals to the SEN Tribunal (see Harris, 1997; GB. Parliament. HoC, Education Committee 1996). The analyses suggest that they give part of the explanation for differences between LEAs in the numbers of appeals they experience, but that they are not the whole explanation. Other factors, connected to the ways in which special educational needs are identified, assessed and provided for in LEAs, are also part of the explanation. These have been the subject of the NFER research described in the following chapters of this report.

Chapter 4 — The NFER Research

The survey

A short questionnaire was sent to all English and Welsh LEAs. A total of 118 LEAs responded to the questionnaire — a response rate of 75 per cent of the LEAs in existence in September 1997. In addition to asking each LEA to give the number of appeals registered between September 1996 and July 1997, and the number which were actually heard by the Tribunal between those dates, a number of questions were asked to elicit the extent of the impact of the Tribunal on LEAs' policies, procedures and provision in relation to special educational needs.

Responses were received from a good range of LEAs, including county councils, London boroughs, metropolitan authorities, Welsh authorities and unitary authorities (see Table 4.1 below).

Table 4.1 Responses to the NFER questionnaire

Type of LEA	Number of Respondents	Response rate (%)
London borough	24	73
Metropolitan district	28	78
Welsh authority	16	73
Shire county	25	71
Unitary authority	24	86

The sample reflected a range of rates of appeal to the Tribunal. Over 60 per cent of LEAs with more than five appeals per 10,000 (high rate) and 70 per cent of those with less than one appeal per 10,000 (low rate) responded to the questionnaire.

Of the appeals registered by the LEAs in the NFER sample, 40 per cent did not go on to a hearing during the period in question. This is a slightly lower figure than that reported in the Annual Report of the Tribunal (SENT, 1997), which analysed figures over the first three years of the Tribunal's operation (see Chapter 2, p. 8, Table 2.1).

Impact of Tribunals

Over half the LEAs responding to the questionnaire (59 per cent) had experienced a Tribunal decision which had had a *significant* financial impact with respect to at least *one* pupil. These LEAs were predominantly ones which had high numbers of appeals. LEAs are often worried that a high-profile case, where a parent wins significant extra resources for a pupil, might lead to a 'bandwagon' effect, where other parents of children with similar needs would be encouraged to seek similar levels of provision (for example, highly specialised residential treatment for autism). However, the majority of LEAs (68 per cent) reported that they had not experienced a decision which had significant implications for pupils with similar needs and 85 per cent reported that they had not had a decision which caused major or notable changes in LEA policy. As far as their procedures were concerned, there did appear to be more response, although this was still in a minority of LEAs. Some 41 per cent reported that they had made some changes in their procedures as the result of the possibility of appeals to the Tribunal. The Tribunal had not led to additional personnel being appointed to act as liaison between parents/carers and the LEA in the majority of LEAs (70 per cent), although almost half (49 per cent) had created a post to deal with the extra administrative workload associated with appeals.

It seems that LEAs, on the whole, tend to treat Tribunal decisions as 'one-offs' and do not consider them to be an indication of problems with their SEN policies or levels of provision — 85 per cent said that there had been no notable change in policy as the result of a Tribunal decision. They are reactive rather than proactive and view appeals to the Tribunal as 'a price worth paying' to defend their SEN policies. This may be why a number of LEAs continue to have high levels of appeals. These issues will be discussed more fully in the chapters reporting on the LEA case studies.

Telephone interviews

Follow-up telephone interviews were carried out with respondents in 46 of the 118 LEAs which had responded to the initial questionnaire. The criteria for selection of these LEAs were that they had either:

- experienced a significantly lower or higher level of appeals than average;
- experienced a case which had had a significant financial impact in relation to at least one pupil; or,
- made significant changes in provision, policy or practice as an outcome of appeals.

A number of recurring themes and issues emerged from these interviews, which were explored further in 25 LEAs chosen for more in-depth study. The LEAs in the case study sample comprised ten with low levels of appeals and 15 with high levels, three of which had high levels of appeals associated with refusal to assess under the statement procedures. The LEAs were chosen to reflect a range of types of LEA, a geographical spread, and different experiences of the Tribunals, as ascertained through the telephone interviews.

Table 4.2 The case study sample

Type of LEA	High or Low Appeals	Number of LEAs
London borough	Low	1
London borough	High	6
Metropolitan borough	Low	6
Metropolitan borough	High	3
Shire county	High	5
New authority	Low	3
New authority	High	1
Total		25

In each LEA, semi-structured interviews were carried out with an officer with responsibility for SEN, a Parent Partnership Officer (or equivalent), and, where possible, with parents.

The areas covered in the interviews with LEA personnel were:

- background details about the LEA;
- SEN policy in the LEA;
- relationships with parents, support services, voluntary organisations, schools and other agencies;
- the impact of the Tribunal on policy and practice;
- the financial impact of Tribunal decisions;
- the costs of Tribunal appeals;
- experience of the Tribunal.

The parent interviews centred on what had led up to their decision to appeal, the experience of the Tribunal and its outcome.

The themes and issues which emerged from the case studies can be grouped under three main headings:

1. **Why do parents appeal?**
   - LEAs' policy and provision for special educational needs
   - LEAs' relationships with parents
   - The role of schools
   - The role of voluntary organisations and pressure groups

2. **What has been the impact of appeals on LEAs' practice?**
   - LEAs' attitude to the Tribunal
   - Positive impacts of Tribunal decisions
   - Negative impacts of Tribunal decisions
   - 'Misuses' of the Tribunal
   - Equity issues

3. **What factors are associated with a high or low level of appeals?**
   - Relationships with parents
   - Relationships with schools
   - Policies and funding commitment for SEN
   - Effectiveness of SEN procedure
   - Appropriate range of SEN provision
   - Characteristics of the local community
   - Level of pressure group activity.

Chapter 5 — Why Do Parents Appeal to the SEN Tribunal?

Dissatisfaction with LEAs' policies and provision for SEN

According to the latest Annual Report of the SEN Tribunal (SENT, 1997), the reasons for appeals to the Tribunal were as follows:

Contents of the statement	50.2%
Refusal to assess	27.1%
Refusal to make a statement	14.0%
Refusal to cease to maintain statement	4.0%
Refusal to change name of school	2.0%
Refusal to reassess	1.9%
Failure to name a school	0.3%

The NFER case study data indicate that these generalised figures can be explained by a wide range of factors regarding LEAs' policies, practices and provision for special educational needs.

Refusal to assess and refusal to make a statement

A growing proportion of appeals (up 3.3 per cent from the previous year) concerns access to the statement procedures (i.e. parents appealing against the LEA's refusal to assess their child). This may reflect a growing concern among LEAs about the inexorable rise in statements year on year, and the growing expectation among schools and parents that special educational needs must attract extra resources in order for them to be met in mainstream classrooms. LEAs have used the Code of Practice stages to try to ensure that schools have identified and supported pupils at the appropriate level *before* they seek a statutory assessment, but, as one of the NFER respondents pointed out, many schools see these as a system of hurdles to be jumped with a statement as the prize at the end. Thus, many LEAs have tried to be explicit about the criteria they use to decide whether a pupil needs a statutory assessment, and the use of Stages 1–3 of the Code. However, it was reported by a number of respondents that many schools do not recognise their responsibility to meet needs from their own resources and are encouraging parents to request statutory assessments.

LEAs have a range of approaches to deciding whether a pupil's needs meet the criteria they have established for access to the statutory assessment procedures. In a number of LEAs, the decision to assess is made by a panel, which may include any of the following: an Educational Psychologist, a SEN

officer, a headteacher representative, representatives from the Support Services, Health and Social Services. Typically, panels have no personal knowledge of the cases presented to them, and make their judgements based on reports they receive. Their role is to ensure that the criteria for statutory assessment are adhered to and to provide moderation across schools within the LEA. In this role, they can be very effective. However, if the caseload is a heavy one, as it is in some of the authorities with high statement rates, it is open to question whether the cases presented receive adequate attention from the panel. In the case of one authority in the NFER sample, which had a very high rate of appeals to the Tribunal, both the Parent Partnership Officer and some of the parents themselves were critical about the operation of the panel.

> *We went to the panel, but there was no EP report, because the EP who had done the assessment had left and nobody had bothered to look for the report.* (Parent A)

> *There was no sign that the panel had read the report of the local EP. The panel hadn't received it. Despite having ordered it, they hadn't bothered to find out if the assessment had taken place and if not, why not.* (Parent B)

> *They don't read and consider the reports they get, nor do they ensure that the panel has the points made to them. They don't identify in their own minds what they do and do not expect in the reports and advice of experts. So they fly in the teeth of reports from professionals. They don't take any care over the paperwork.* (Parent B)

> *They* [the Authority] *decided to use the EPs as gatekeepers. It takes six months to a year to get an EP report, and this holds up the whole system. They can be put on Stage 3* [of the Code of Practice] *if a panel consisting of SENCO, headteacher, EP and advisory teacher agree. Once a child has been on Stage 3 for two IEPs and has made no progress, they can be put forward for statutory assessment. They will have to wait one more term for the EP. Parents get fed up, so schools suggest to parents that they ask for an assessment, because, if it's turned down, they can go to Tribunal. Once assessment has been requested, it goes to the Panel which consists of the Inspector, Senior EP, Statementing Manager, EWO, a headteacher and sometimes Health or Social Services. They meet once a week. It's very expensive. They are given the paperwork two days beforehand and are expected to read, make notes and come to their own individual decision. They consider about 30 cases per meeting. They look also at placement, statutory assessment, changes to draft statements etc. There has been a huge increase in workload this year.*
> (Parent Partnership Officer)

One gets the impression that, in this LEA, a tremendous amount of time and resources are devoted to preventing parents from accessing the system. This has proved to be counter-productive, because it has resulted in a huge increase in appeals to the Tribunal for failure to assess.

Case history: Joe

Joe, aged seven-and-a-half, had displayed learning difficulties since he started school. The parents thought that these would be dealt with as a matter of course, and it came as a shock to find that this was not the case. The school tried to get extra help for Joe from the authority's central support services, but were turned down by the panel which allocates resources at Stage 3 of the Code of Practice. The parents then got in touch with the EP and heard that they could ask for 'an assessment'. This they did, but nothing happened. Then the EP wrote saying that the school had asked for an assessment, but this took so long to be organised that the parents, having realised that they needed to ask for a 'statutory assessment', did so. The EP started the process of assessment at this stage.

In the mean time, the parents had a letter from the LEA saying there were no grounds for statutory assessment. They had had no report from the EP, so they decided to appeal to the Tribunal against the decision not to assess. The LEA went right up to the deadline for the Tribunal, and then changed its mind and agreed to an assessment. Still no EP report had been produced.

Eventually, an assessment was carried out, but, because there had been so much delay, and reports had been mislaid or were out of date, new assessments were carried out and all the accumulated evidence from the school was ignored. A draft report offered five hours per week of welfare support, so the parents appealed again to the Tribunal and their son was eventually given a full-time welfare assistant and specialist teaching support.

The whole process took two-and-a-half years. The parents' view was that the delay meant that the child's problems had worsened and that he now needed more help than he would have done if intervention had been earlier: 'They pass the buck to next year's money. It costs more in the long run.'

The issue here, as in a number of other LEAs, is whether there is adequate support for pupils at earlier stages of the Code of Practice which might obviate the need for a statement and therefore reduce appeals. This point was made in several of the LEAs in the sample. For example, in one newly formed LEA, which had been part of a larger authority before local government reorganisation, the Parent Partnership Officer, who had worked in the previous joint authority, predicted that there would be a huge rise in Tribunal appeals, because the new authority was trying to cut the rate of statements, but not allocating more funding for support at Stage 3 of the Code. In the authority concerned in the case history described above, the trigger for a huge rise in requests for statements was that the LEA had implemented a new policy of reducing its centrally funded support team and devolving funding to schools, but at a reduced rate. Schools could not (or would not) find enough funding to provide the level of support previously given to pupils at Stage 3, so parents had started to ask for statutory assessments to gain access to resources for their child.

Most LEAs have tried to be clear about the criteria which they use to decide whether a child should be assessed under the statutory procedures, using the Code of Practice as a guide. The need to defend their stand on this was one explanation often given by LEA officers for allowing cases to go to the Tribunal. One new unitary authority experienced a high level of appeals when it decided to attempt to reduce the level of statements. In order to change the culture in the LEA — to make schools and parents aware that resources would be available in schools for the more common, high-incidence types of special needs — the

LEA was prepared to let cases go to the Tribunal. As the SEN officer put it:

> *The Tribunal made some sensible decisions, and schools began to see that there was nothing to be gained by encouraging appeals.*

An officer in another new LEA, which had not yet had a case go to the Tribunal, said that their strategy was to keep talking to parents, to find common ground:

> *We are committed to reaching solutions and avoiding conflict if we can. ...Sometimes you have to agree to differ, but, so far, we have managed to work things out.*

However, this officer was expecting one case, where a parent had asked for an assessment, to go to appeal.

> *We won't avoid appeals just for the sake of it, as we believe our stance is appropriate. We have our first case on the way though, over our refusal to initiate a statutory assessment. Parents are often driven by pressure groups. There are issues around a specific learning difficulty. Dialogue has not occurred in this case. We are trying to engineer this process, but there is unwillingness by the parent to do it. We want to better understand the parents' concerns, want to open up discussion, to go through this process as with any other parent. The parents have said they are going to appeal, but we have not heard anything yet.*

POLICY IMPLICATIONS:

The strategy of trying to contain or reduce the level of statements is crucially dependent on schools being given the resources and support to provide for pupils at Stage 3 of the Code of Practice, and both schools and parents being confident that children's needs will be met effectively.

There are a number of ways in which this can be done. For example, some LEAs are devolving money for Stage 3 support to groups or clusters of primary schools, which will moderate each other's use of the resources. This ensures that there is a similar level of funding and support across the schools and that schools can cooperate and share their expertise (see Evans *et al.*, 1998). Others are using special schools as resource centres to support mainstream schools in their work with pupils with moderate learning and behaviour difficulties (Fletcher-Campbell and Cullen, 1998).

The Green Paper's (GB. Parliament. House of Commons, 1997a) stress on the need to reduce statements to around two per cent of the school population, together with its promotion of the importance of inclusive education, will require many LEAs to review their existing policies about criteria for assessing and producing statements and their methods of resourcing pupils at Stages 1–3 of the Code of Practice. The proposals contained in the Fair Funding document (GB. DfEE, 1998c) also have implications for the ways in which LEAs fund and support provision for pupils with SEN at the school level.

Appeals against the contents of the statement

The Tribunal presents statistics for these appeals under three headings:

- Parts 2 and 3 (special educational needs and special educational provision);
- Parts 2, 3 and 4 (as above, but including the recommended placement);
- Part 4 (placement only).

Nationally, 30 per cent of appeals against the contents of the statement relate to Parts 2 and 3, 46 per cent relate to Parts 2, 3 and 4 and 25 per cent relate to Part 4 only.

Appeals are often interpreted by LEA officers as intransigence by parents who are intent on pursuing their own ideas about their child's needs against the advice of the professionals. The main issues for LEAs appear to be appropriateness (i.e. *does the proposed provision meet the needs?*) and cost (*how can the appropriate provision be provided at the lowest cost?*) Many of the more high-profile cases centre around parents wanting expensive residential provision when the LEA considers that it can make appropriate provision in a local day school. These are the cases which, when the Tribunal has found in favour of the parents, have prompted LEAs to question its remit and to raise the issue of the equitable use of scarce resources (GB. Parliament. House of Commons, 1996). However, although these cases pose problems for LEAs, in the main, according to the NFER survey, they are very few in relation to the number of cases which come before the Tribunal.

Cases involving literacy and specific learning difficulties (SpLD)

A number of authorities seem to have experienced particular problems with parents wanting residential placement for their children with specific learning difficulties. Such cases make up a considerable proportion of the Tribunal's work. In 1996/7, 36.3 per cent of cases concerned literacy (including specific learning difficulties). The previous year, the proportion had been 39.6 per cent. In one LEA in the NFER sample, 50 per cent of cases brought to the Tribunal concerned specific learning difficulties. One respondent remarked: 'Of course, SpLD is in the water here!' The LEA had a total of 16 appeals lodged in 1994/5 and six of these were upheld by the Tribunal. Since then, they have had a further 34 appeals lodged, but only two have been upheld. Nationally, around one-third of all appeals concerning literacy and specific learning difficulties are dismissed — a higher ratio than appeals concerning other types of special educational needs.

The LEA cited above had invested in a wide range of provision for specific learning difficulties (four primary and four secondary units) and did not place pupils outside the LEA for specific learning difficulties 'unless instructed to do so by the Tribunal'. At the time of the research, there were three such placements costing £20,000, £11,000 and £11,000 per annum respectively.

Case history: Oliver

Oliver, who is now 15, has specific learning difficulties and was given a statement at the age of nine, nearly ten. He was in a private pre-prep school and his mother, a dyslexia-trained teacher, was going in to help him. As he was making little progress, the school and the parents decided that a formal assessment was needed and wrote to the LEA to request one. The LEA were 'quite quick off the mark', and the Senior SEN Inspector came into the school to see Oliver and wrote a report saying he needed a formal assessment.

The Educational Psychologist assessed him and the whole process was completed by the summer term of his tenth year. He was offered a place at an LEA primary school with a unit for specific learning difficulties attached, which the parents accepted. He spent a year at the school, with three mornings a week in the unit and the rest of the time in the main school. His mother said: 'It didn't do a lot for him, but it was better than what he was being offered in the private school.'

He transferred to a secondary comprehensive school the following year. The LEA offered eight hours' one-to-one teaching plus two hours' flexible time for the school to use at its discretion. This did not work out and his behaviour began to deteriorate. He was 'being silly' in class and finding it difficult to cope. The school was very worried about him and the parents took the advice of the school that they had to do something.

The parents felt that he needed a 'whole-environment' approach to tackle his problems and took him out of the LEA school and placed him in a private boarding school which specialised in dyslexia. They then applied to the LEA to change the name of the school on the statement. They did not communicate directly with the LEA, but conducted all their communication through their solicitor, who specialised in special educational needs cases. The LEA refused to change the name of the school, so the parents appealed to the Tribunal.

Oliver had two years at the private boarding school as a weekly boarder, and after he had been there one year and a term, the Tribunal found in the parents' favour and ordered the LEA to pay the fees for his last two terms. Since the school only took pupils up to the age of 13, Oliver then transferred to another boarding school, and the LEA accepted responsibility for the fees. It was not a specialist school for pupils with dyslexia, although 75 per cent of the boys there had learning difficulties of this type. He was in small classes with boys who had similar levels of difficulty and the parents assumed he would stay there until he was 18 years old.

This appears to have been a case where the parents had a number of resources at their disposal: they were supported by a voluntary organisation; they used a solicitor to negotiate with the LEA and to present their case at the Tribunal; and they were able to place their child in an independent school and pay fees until the Tribunal ruled that the LEA should be responsible for funding the placement.

This is the type of case which raises questions of equity and efficient use of resources. The parents felt that the provision offered by the LEA was not adequate to meet their son's needs. However, LEA officers would argue that the level and cost of the provision given to a small number of individuals results in a distortion of the SEN budget, and consequently less money available to fund support for the remainder of pupils with special educational needs. The officer in this LEA commented:

> *We have lost very few cases, but the common factors in the cases we have lost have been (a) prior placement by parents and (b) parents employing a barrister or a solicitor.*

In another shire LEA, the SEN officer also attributed the high rate of appeals to the Tribunal to parents wanting expensive residential provision for their children with specific learning difficulties. Of 62 Tribunal cases registered in 1996/7, 43 (70 per cent), concerned literacy, including specific learning difficulties. About half the appeals were from parents wanting their child to go to an independent school and, of these, 50 per cent of the parents (11) had placed their child in the school prior to the appeal. There is some criticism, from LEA officers, of independent schools and voluntary organisations, which use various tactics to ensure a place in expensive independent provision for children whose needs, according to the LEA, could be met in its own provision. This LEA, like the previous one, had invested extensively in provision for specific learning difficulties — 21 teachers in total, split into two teams, one in the west and the other in the east of the county. These teachers are based in units and in mainstream schools. The SEN officer described it as 'a Rolls Royce model'. She could not understand why so many parents went to Tribunal to get provision when this level of support was available. One suggestion was that there were a large number of independent schools of all types in the county and that parents were used to using the private sector for their other children, and wanted the same for their child with special needs, but 'at the LEA's expense'.

The issue of supporting pupils with problems of literacy or specific learning difficulties has been a longstanding one in the history of the operation of the Education Act 1981 and its subsequent amendments, and prompted large numbers of appeals under the previous system, as well as, currently, to the Tribunal. The present Government has implemented a National Literacy Strategy to improve attainments in this area, with a goal of 80 per cent of children reading at level 4 or above by the end of key stage 2, and a specific remit for teacher training courses for key stages 1 and 2 to address the teaching of literacy (GB. Parliament, House of Commons, 1997b).

It might, therefore, be expected that reading difficulties in children will be picked up earlier and tackled more effectively over the next few years, and that this will reduce the pressure to produce statements, except for pupils with quite severe and intractable problems with literacy. However, the focus on literacy will also serve to raise awareness among parents and may lead to more pressure on schools to achieve good outcomes in this area, in turn leading to more pressure on LEAs for support and resources.

POLICY IMPLICATIONS:

Since so many Tribunal cases arise out of problems with literacy, LEAs wishing to minimise the numbers of Tribunal cases they are involved in might wish to ensure that schools are supported to implement the National Literacy Strategy effectively and that expertise to support schools to help children with more severe problems or specific learning difficulties is readily available, either at Stage 3 of the Code of Practice, or as part of provision made following a statutory assessment. This will involve a comprehensive programme of in-service training for teachers at primary and secondary levels, as well as the retention of sufficient expertise at the LEA level to provide training and support. Links with higher education institutions would also provide LEAs and schools with valuable expertise and training opportunities.

Complex cases involving residential placement or intensive one-to-one support

Many of the more high-profile and contentious cases brought to the Tribunal involve disputes between parents or carers and the LEA about the best provision for quite complex sets of special educational needs. Quite often, too, there are family or social circumstances which prompt parents or carers to request residential placement. LEAs are reluctant to fund such placements unless they are justified on purely 'educational' grounds. The Tribunal seems to take a wider view, often concluding that family circumstances are a key issue when considering what provision might best meet a child's educational needs. More effective multi-agency approaches, involving social services, for example, might help to clarify situations where residential placement might be needed on family or social grounds, and joint funding of such placements might be negotiated.

Case history: Carl

Carl is now eight years old and has severe spastic quadriplegia and reduced visual function. He is fully dependent on adults for most of his daily functional needs. His mother is a single parent who has two other children, one older and one younger than Carl. All three children have been on the Child Protection Register and, at the time of the Tribunal, in 1995, the older child was still on the Register.

The dispute between the LEA and the parent was whether Carl's needs could best be met at the local authority day special school, or at an independent specialist school as a weekly boarder. The Tribunal's view was that, although both schools could provide adequately for Carl's needs during school hours, he needed a residential placement, partly in view of the severity of his needs, and partly to relieve his mother of the need to provide constant one-to-one attention at the same time as trying to bring up two other children.

The Tribunal concluded that: 'On balance, any disadvantages in Carl being away from home are outweighed by the risks associated with him remaining at home.'

The Tribunal felt that the Education and Social Services Departments of the local authority were each trying to isolate their responsibilities in order to avoid the overwhelming case established for a joint approach and joint funding of the placement. It strongly recommended that the Education and Social Services Departments and the Health Authority should cooperate in establishing a joint plan to assist Carl's family. This recommendation was later rejected by the Education and Social Services Departments.

This case illustrates a classic dilemma for LEAs – should they agree to fund needs which are not strictly 'educational' but which have implications for a child's progress (for example, speech therapy or residential placement) and set a precedent which leaves them vulnerable to funding all similar cases in the future? Or should they resist the pressure and risk censure for not adequately addressing the child's needs in a holistic way? As the Tribunal judgement quoted above points out, the ideal way to solve such problematic cases is for there to be close collaboration between local authority Departments of Education and Social Services and the Health Authority. However, in the competition for scarce resources, it is often problematic for those departments to work out strategies and criteria for joint funding of placements (Dyson *et al.*, 1998).

Another area where there appears to be growing demand and also debate about what is the best provision is that of autism or, more generally, *autistic spectrum disorders*. There has been a considerable increase in Tribunal cases involving autistic spectrum disorders. Although they only make up six per cent of cases, as the President's report for 1996/7 comments, the percentage of appeals concerning autism has doubled since the inception of the Tribunal. Almost all the NFER case study respondents reported that they were aware that there were gaps in their provision for autism or autistic spectrum disorders. There are also significant differences of opinion among professionals and parents about the best way to meet the needs of children with such disorders and these have led to some of the more contentious Tribunal cases.

In one LEA, for example, parents using the Lovaas method with their daughter had applied to the LEA for funding to continue the programme once the child (who was four) went into school. The LEA was of the opinion that the provision it was proposing would meet the child's needs and would be a more efficient use of resources. However, the Tribunal ruled in the parents' favour and the LEA was forced to fund the cost of a Lovaas worker in the school for 20 hours per week, plus the cost of a Lovaas worker in the home and the cost of three or four training workshops per year from a consultant who travelled from Norway. The total annual cost was estimated by the LEA to be £13,491.

This LEA had been in touch with a number of other LEAs in its region, who were facing similar situations with this particular controversial approach to autism. Currently, these LEAs had similar *ad hoc* arrangements for individual children whose parents have been to Tribunals. As yet, there is no consensus about the most effective provision for children who have autism or autistic spectrum disorders. (An NFER study of LEA provision for younger pupils with autistic spectrum disorders will report its findings towards the end of 1999.)

Another set of difficulties which often leads to requests for residential placement is that of physical disability and, in particular, cerebral palsy. The high profile given to conductive education in the 1980s led to a number of children attending the Peto Institute in Hungary. Following this, residential schools offering a form of conductive education have been set up in the UK, some of which are run by the voluntary organisation, SCOPE. As with autistic spectrum disorders, there are differences of opinion among professionals about the most appropriate treatment for cerebral palsy and parents often develop strong views about what their child needs, which leads them to challenge the decisions made by LEAs.

Case history: Carol

Carol was born very prematurely and also contacted meningitis at an early age, which left her with cerebral palsy. Her mother is a single parent, and her grandmother seems to have been a key decision-maker about the child's educational needs. She raised money to take Carol to the Peto Institute in Hungary when she was around two-and-a-half and she had five visits there, ranging from five weeks to six months, before she was five years old. As she was coming up to school age, the grandmother decided to look for a school which would offer conductive education and found one which seemed suitable and Carol went there, into the nursery unit, accompanied by her grandmother, who paid the fees.

When Carol was five, the mother applied to the LEA to fund a residential placement in the main school, but the LEA considered that it could meet the child's needs more cost-effectively in an LEA school nearer to her home, which would not involve a residential element. Because of their commitment to conductive education, the grandmother and mother decided that this was not acceptable and appealed to the Tribunal, which found in their favour.

Carol was eventually enrolled at the residential school, but the grandmother soon realised that it was not a suitable placement because the other children in the main school, as opposed to the nursery, had much more severe learning difficulties than her granddaughter. She contacted the LEA, who arranged for Carol to be given a place at the school which they had initially wanted her to go to. There were further complications in this case, in that Carol's father appeared on the scene and insisted that he wanted his daughter to be at the residential school which the Tribunal had recommended. Eventually after court appearances (for not following the Tribunal's ruling), and another Tribunal hearing, the placement at the LEA school was confirmed.

POLICY IMPLICATIONS:

This case illustrates a number of key points:

1. Neither the parents/carers nor the LEA had visited the school which was the subject of the appeal, and therefore no one had assessed whether it would meet the child's needs. Parents are not experts, and those that they call in to help them make their case are not necessarily making an objective assessment of the suitability of the proposed provision, particularly if they have a financial or professional interest in the outcome.

2. Much more information about proposed schools (especially independent and residential schools) needs to be considered by both the LEA and the Tribunal when it is making its decisions. OFSTED reports would be a good source of information about a school's regime, pupil population and effectiveness.

3. LEAs that defend their decisions solely on a 'value-for-money' basis, thinking that if they can demonstrate that they are offering appropriate provision in the most cost-effective way they will win cases, may need to widen their argument to show that the alternative proposed is not as suitable as that which they are offering.

LEAs' relationships with parents

As well as being a response to a lack, or perceived lack, of adequate provision for pupils with special educational needs, appeals are also a manifestation of a breakdown in the relationship of 'partnership' between parents and the LEA. The term 'partnership' has been emphasised as a key concept in the development of special education policy since the time of the Warnock Report and was incorporated into advice and guidance in Circulars during the 1980s and 1990s. The power relationships underlying partnership between parents and LEA officers and professionals may have shifted subtly since the introduction of a more consumerist approach to education during the 1980s, but, as far as pupils with special educational needs are concerned, professional opinion is still a very powerful voice in decision-making.

The previous Government recognised a need for parents of children with special educational needs to receive support and advice throughout the assessment process and made funding available through the GEST budget for the appointment of Parent Partnership Officers (PPOs). Although this funding had since come to an end, some of the LEAs in the NFER study had continued to fund these posts, or variations of them. The PPOs act as a source of information and support for parents; they set up and train groups of volunteers to act as named persons; and, in some cases, they act as advocates for parents who are in conflict with the LEA. On the whole, however, they see their role as mediation and conflict resolution (Wolfendale and Cook, 1997).

A number of the LEAs with a low level of appeals attributed this, in part, to the efforts that they had made to communicate effectively and to support parents. Most of these were the smaller urban LEAs, where there was easy access for parents to the LEA offices to meet face to face with those dealing with their case. Not all of these had a PPO in post, but a number had virtual 'open door' policies, whereby parents could ring up or call in to see an administrative officer at any time:

> *We work on a very accessible/informal basis, but with a degree of professionalism. We hope that our parents will feel supported because some of the messages we have to deliver are not very nice ones. I would like to think that sincerity and a positive feeling come across. Parents can telephone directly through to officers.*
>
> (SEN officer, metropolitan LEA)

This LEA no longer has a PPO, but is hoping to reinstate the post.

In another LEA, the PPO had organised a parents' support group and the Principal SEN officer attended meetings of this group to explain LEA policy and answer any queries. In addition, parents could phone or drop in on their case workers to discuss any problems they had.

Interestingly, the LEAs in the NFER study which retained the post of PPO tended to be those with higher rates of appeals to the Tribunal. Those with low rates of Tribunal cases tended to give parents direct access to the officers and put the emphasis on direct negotiation and personal contact. The role of the

PPO, which is seen as a semi-independent one, puts a distance between officers and professionals making decisions about children and the parents of those children. Thus, there appears to be a difference in attitude between those LEAs which emphasise direct contact and ease of access for parents, and those which try to maintain a distance from parents and use the PPO as a mediator:

> *Parents have a human face to talk to. They can get to the people who are making the decisions, be involved in the process. We try to be creative, not rigid in our procedures. Even if it is not what parents first thought of, they appreciate being listened to. The role of the EP is important. Parents feel the EP is able to be a broker between them and the decision-making side of the LEA. We often refer back to the EP, to those who actually know the children. We have a special needs centre which houses the Parents' Advice Centre. We provide a hotline for parents to phone in with concerns. We have a parents' support group. Parents are encouraged to come in and voice their concerns and meet.*
>
> (SEN officer, London borough, low number of Tribunal cases)

> *My perception is that the LEA goes ahead against parents just to see how far parents will take it. And some do give up, but if parents keep going, then, on several occasions, the LEA has backed down at the last minute before the date of the hearing. Partly, this must be because they think it will cost them less than going to SENT, but I feel there is an element of testing the water to see how far they can push parents. I don't feel this is healthy, because then some parents feel that appealing is the only way to get the LEA to listen .*
>
> (PPO, metropolitan LEA, high number of Tribunal cases)

One LEA, with a high rate of appeals, had created a post of Tribunal Officer, to deal with the amount of paperwork generated by a high level of appeals. The appointment had the effect of further distancing the decision-makers in the LEA from the consequences of their actions:

> *I would always want to work closely with parents and show them the face of the LEA that is willing to listen and willing to try to help, but that needs to be clearly linked in to what is happening around me and at the moment it feels like...if colleagues are doing things over there and I'm over here being expected to put right what's gone wrong and not having the authority, the power to influence...* (LEA officer)

The important issue seems to be, not whether an LEA has a Parent Partnership Officer, but whether that person is used as a core member of the SEN team, to talk to parents and give them a voice in decisions about their child, or whether s/he is used as a go-between to provide a buffer between parents and those taking decisions about their children.

A key factor in accessibility is having sufficient staff working within the special education section of the LEA to have the time to talk to schools and to parents, to make sure communication does not break down. A respondent in one LEA said that relationships between the LEA and parents had become difficult

because he had not had enough staff to maintain proper direct contact with parents. Another reported that the relationship with parents was:

> *Better than it was. It was awful at one point. At senior management level, communication with parents was non-existent because there were long-term staffing difficulties and, preceding that, there was an officer who didn't really have time to be able to speak to parents because they had to be in half-a-dozen different places at once, so that put the section in a very awkward situation where they were constantly having to fend off parents. I think parents picked up on that kind of defensiveness.* (SEN officer, London Borough)

In some LEAs, parents were reported to be fairly passive and acquiescent, and this may, in part, explain differences in the rate of Tribunal cases.

> *People are generally happy with provision here. There is a suspicion about anything 'external' and a trust for local people. Parental aspirations are perhaps not as great. They prefer to stay in the local area. We are rarely in dispute with parents.*
>
> (SEN officer, new unitary authority, low number of Tribunal cases)

> *Generally, though, there is a degree of apathy around. It's either apathy or the fact that parents are very trustful. Parents seem to accept that the LEA wants the best for their child and are therefore happy to let us make appropriate judgements. We get less than ten direct parent referrals for statutory assessment per year*[1].
>
> (SEN officer, metropolitan LEA)

Among LEAs with high rates of appeals, some of the explanations given for this were in terms of the aspirations and assertiveness of parents. It was felt that certain types of parent ('largely professional, middle-class', 'the Tribunal attracts middle-class parents who are articulate', 'the Tribunal is a weapon for middle classes to get more out of the system') were dominating the appeal system. However, other respondents reported that they did not detect a significant middle-class bias among the parents using the Tribunal. Whatever the reality, it does not seem useful for LEAs to use the 'middle-class bias' of the population of parents who appeal to the Tribunal as a reason for not examining their provision and their procedures to see if they need to make changes. It may be that middle-class, assertive parents are identifying problems and gaps in provision to which LEAs need to pay attention.

[1] *Over 3 per cent of the pupils in this LEA have statements.*

The role of schools

Schools are a key part of the LEAs' provision for special educational needs. The ways in which schools fulfil their responsibilities to make provision and to support and advise parents of children with special educational needs will be a major factor in whether parents are satisfied with the LEA's provision for their child. Local Management of Schools (LMS) and the delegation of funding have meant that LEAs have reduced control over school budgets and cannot dictate to schools how they spend their funding. This has meant, in some cases, that there is a mismatch between the expectations of schools and LEAs about which has responsibility to resource support for pupils with special educational needs (Fletcher-Campbell, 1996; Fish and Evans, 1995). The Code of Practice has clarified this to some extent, but there is still a great variety of practice across the country in the ways in which funding for special educational needs support is allocated and monitored (Fletcher-Campbell and Cullen, 1998).

In practice, this has left some parents in a situation where they are being told one thing by schools and another by the LEA about who is responsible for funding any extra provision for their child. In a number of the LEAs in the NFER study, high levels of appeals to the Tribunal were attributed by LEA officers to schools encouraging parents to request assessments even though, in the LEA's opinion, the funding to meet the needs was already in the school's budget.

The 'arms length' relationship which has been engendered between schools and LEAs by LMS (and more particularly GM status) has made it much more difficult for LEAs to implement their policies about statutory assessment and provision. This is clearly demonstrated when LEAs try to change the ways in which SEN provision is allocated and funded. In one or two of the authorities in the NFER study, a sharp rise in Tribunal cases occurred when the LEA attempted to reduce the statement rate, or to move from a centralised allocation of support to a school-based one. For example, one LEA had switched from a centralised allocation of welfare assistant hours to a system of delegating funding to the schools to employ their own welfare assistants and, at the same time, cut the available budget for support at Stage 3 of the Code of Practice. This resulted in a steep rise in requests for statutory assessment and of appeals to the Tribunal against the decision not to assess:

> *The whole reorganisation and the introduction of the banding system, in particular, was going to cause a great deal of difficulty. Historically, there were numbers of pupils getting a very generous level of provision in relation to what was fair and equitable, and so we certainly expect to see a rise in appeals over the next 12 months as the system works its way through.*
>
> (SEN officer, London borough)

In another LEA, the Assistant Principal Educational Psychologist reflected that schools often did not use their delegated funds for Stage 3 support, but encouraged parents to request a statutory assessment:

> *...that is part of the reason why we get appeals over failure to assess. But, during the extensive consultations over LMS, the schools said they wanted as much SEN money as possible in their LMS budget and they agreed to take responsibility for Stages 1 to 3. I think it* [appeals for failure to assess] *is part of the process by which schools learn to live with budget management.*
>
> (Assistant PEP, shire authority)

One of the LEAs in the study was a new unitary authority which was attempting to reduce the statement rate which it had inherited from the previous shire authority and to put more emphasis on schools supporting pupils at Stage 3 of the Code of Practice:

> *Initially there were more appeals, because of the change in policy, mostly against refusal to assess. Teachers were encouraging parents to appeal. But the LEA began to win Tribunals, and there was more understanding about the LEA's new approach. The Tribunal made some sensible decisions and schools began to see that there was nothing to be gained by encouraging appeals.*
>
> (SEN Officer, unitary authority)

In an authority with a high rate of Tribunal cases, an LEA officer, when asked about the role schools play in liaising with parents, replied:

> *Can be good, bad or indifferent depending on the school. It is a very important question to ask, though, because the major point of trust is very often between the parent and the school. We can talk to headteachers and try to explain the policy and the budget, etc., but unless the school, the headteachers consent to that policy, we have a problem. We had a case just the other day of a mother telling us that the headteacher had said that her complaint about us refusing to assess was 'an indication of what we have to put up with'. Now, if schools are saying to parents, 'Oh it's that lot up at the office. Go to the Tribunal', well, LEAs can't win really.*
>
> (SEN officer, metropolitan authority)

On the whole, whereas LEA officers were able to identify the role of schools in contributing to a high level of appeals, they were less likely to acknowledge the role schools played in maintaining a low level of appeals. Explanations for low levels of appeals tended to focus on characteristics of parents and the efforts made by LEA staff to keep parents informed and to avoid conflict. However, the examples given above point to the crucial role which schools have in supporting and implementing LEA policies on special education, and the necessity for LEAs to involve schools and to foster their understanding of and commitment to LEA policies about resource allocation for SEN.

The role of voluntary organisations

LEA respondents expressed a range of attitudes towards voluntary organisations, depending upon whether they perceived them to be a positive or a negative influence on parents. Many LEA officers interviewed in the course of the research were very positive, both about the expertise which voluntary organisations could bring to the LEA's thinking and policy development, and about the support which the voluntary organisations could give to parents of children with special educational needs. Typical comments were:

> *In terms of our relationship with the voluntary agencies, well, they're a kind of critical friend, which is what you would expect really...*

> [Have they influenced the authority in terms of policy and provision?]
> *I think with Lovaas, yes. I think with dyslexia, yes. With both of those, autism and dyslexia, we would acknowledge there are gaps in our provision and the parents have played a role in bringing that to our attention.* (SEN officer, London borough)

An officer in another authority acknowledged the role that the voluntary organisations could play in helping to formulate policy:

> *SCOPE and ASBA were involved on our working party on physical impairment and we will involve both autism groups on our working party on autism next year. I wouldn't consider any policy development now without getting the relevant voluntary groups on board.*
> (SEN Officer, metropolitan authority)

On the whole, the voluntary organisations concerned with specific difficulties are seen as a useful source of expertise for LEAs, and, in the main, they have managed to cultivate good relationships with them. However, tensions arise when voluntary organisations are supporting parents who are in conflict with the LEA. In some cases, their stance was considered to be adversarial rather than conciliatory and LEAs felt, generally, their focus on individual rights and individual cases had led to some inequitable decisions.

One of the problems that LEAs perceived with the voluntary organisations is that they appear have contradictory stances on issues such as inclusion or pedagogy and that each group 'only wants to consider their own angle. They are not interested in the wider LEA policies or provision for SEN.'

The activities of some members of the legal profession, who work quite closely with particular voluntary organisations, have also given LEAs some problems. LEA respondents said that they found it difficult to negotiate and resolve differences of opinion with parents who are represented by solicitors or barristers at Tribunals.

On the whole, the impression given by the LEAs in the NFER study was that they had generally positive relationships with the voluntary organisations and that there were only a few instances in which there was conflict over individual cases, where the voluntary organisations supported parents who were in dispute with the LEA.

Summary and conclusions

This chapter has considered some of the factors which underlie parents' decisions to appeal to the SEN Tribunal. The issue which brings LEAs and parents into conflict about special educational provision is that parents feel it is their right and their duty to obtain the *best possible provision* for their child, regardless of the financial impact and its effects on the LEA's ability to provide for other pupils. LEA officers, on the other hand, are trying to use scarce resources in the most cost-effective way, and are wary of making decisions which commit the authority to long-term funding of expensive provision, especially when they feel that they are able to make *adequate provision* more cheaply, or if they feel that the provision suggested by the parents has not been demonstrated to be effective.

However, parents, as users of services, are often aware of shortcomings in what the LEA is offering for their particular child and have good reasons for their dissatisfaction. The judgements of the Tribunals, although sometimes unwelcome to some LEA officers, are seen by others as giving useful information about where there are gaps in their provision and where they can make a case for more resources from the Education Committee.

Chapter 6 — The Impact of Appeals

The attitude of LEA officers towards the Tribunal

LEA officers varied in their attitudes towards the SEN Tribunal. For some, the Tribunal was seen as an arbiter of the correctness of their decisions. For others, its remit was too wide and it was viewed as threatening to LEA autonomy. The variation in attitudes does not necessarily correspond to the number of cases that LEAs experienced. In one LEA which had a high level of appeals, an officer summed up his ambivalent attitude to the Tribunal:

> *For the right reasons, we actually enjoy the Tribunal. It is ensuring the decisions the panel is making and provides a forum where decisions are tested. In our own minds, the decisions the Tribunal makes are reasonable. It is challenging to your own intellect as an officer. There are positive sides. Some of the Tribunal decisions are very sound, even when we lose, but some are a mess.*

Another commented:

> *I think the Tribunal should be viewed as a very positive set up – both from the parents' point of view and from the LEA's point of view. Largely because it's independent and, although some of the decisions have been criticised as inconsistent, it is all about the evidence on the day. But, like the Code of Practice, it has been very positive in highlighting to various professionals how they should be working with children and their parents. So the whole philosophy is positive. It is just that some LEAs are still working through it and trying to get it right.*

This was echoed by another officer from an LEA with a high level of appeals:

> *We have always felt that the Tribunal has been fairly conducted. We are impressed at how all the cases are handled. The Tribunal has always got to the heart of the issue and has given both sides a chance to air their views. Our experience of the SENT has been positive.*

For some officers, though, the experience has been entirely negative:

> *Originally the Tribunal was set up to deal with the really difficult cases, representing severe needs, which ended up with the Secretary of State.[1] Now the Tribunal is a weapon for the middle classes to get more out of the system. Either there was an oversight at the drafting of the legislation, which set up the dichotomy of the Tribunal's focus on individual cases and the LEAs' duties to all children and for financial prudence, etc., or it was a deliberate strategy and was intended as a way of buying off troublemakers. As it is, the numbers of appeals have rocketed and the Tribunal's budget is x millions – it's out of control.*
>
> (SEN officer, authority with a high rate of appeals)

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[1] *This is not correct. The Tribunal was set up to replace both local appeals and appeals to the Secretary of State.*

This very negative attitude was rare among respondents in the research. Mostly, they acknowledged the useful role that the Tribunal plays in adjudicating in difficult cases, although they also gave examples of contentious decisions which they had not agreed with. The Tribunal has had both *positive* and *negative* impacts on LEAs and these are presented and analysed below.

Positive impacts of Tribunal decisions

♦ The Tribunal provides feedback about LEAs' decisions

Often, LEAs have seen Tribunal decisions as validating their stance on various issues such as the criteria for agreeing to a statutory assessment. Cases which are resolved in favour of the LEA are seen as confirmation that a correct decision has been made and that they are justified in continuing with their approach. Even those LEAs which have a high level of appeals are sanguine about this, in the main, because the majority of those appeals are not upheld by the Tribunal. This confirms to LEAs that they are correct in their decisions, and, from that point of view, they have had positive experiences of Tribunals. Cases which are lost often serve to highlight areas where the LEA knows that it is currently making insufficient provision and are therefore also seen as providing useful information upon which to develop policy and provision.

♦ Tribunal decisions highlight areas where provision needs to be developed

The pressure provided by Tribunal decisions (or the threat of them) about lack of suitable provision within an authority helps officers to make the case for developing such provision. Frequently mentioned examples of this are lack of provision for autism and for dyslexia:

> *Parents... by causing the authority to fund of its own volition and through its own policy-making structures rather than being pushed by the Tribunal to fund Lovaas for pre-school children. I think that's a major change. It goes way back to the policy needing review.... Dyslexia's the same. I think we would acknowledge that if we had to re-write the policy, that a provision gap is secondary-level specific learning difficulties.* (SEN officer)

In this way, officers are enabled to make the case to their senior managers, or to elected members, to develop provision for certain types of special educational needs. In some cases, the officers concerned felt that there was adequate provision, but that parents were still dissatisfied, so they had to make changes. For example, in one LEA, they had collaborated with the Dyslexia Institute to provide tuition in mainstream schools, and this had been done specifically to avoid Tribunals:

> *The appeals won't go away with dyslexia, because it is still a perceived lack. The difference is I now have something I can show the Tribunal that I'm offering. What I had to do was plug the weakness in our argument.* (SEN officer)

♦ Tribunal decisions highlight staff training needs

Another aspect of provision is the availability of staff with the expertise to meet certain special educational needs. Decisions by the Tribunal have demonstrated to LEAs where there are gaps in staff expertise and where they might want to invest in training. For example, one outcome of providing training for SENCOs and teachers to support pupils at Stage 3 of the Code of Practice, particularly those with specific learning difficulties, is likely to be a reduction in the pressure from parents for statutory assessment. In some LEAs, administrative officers have received training in how to support and negotiate with parents.

♦ Tribunals encourage more rigour in LEAs' decision-making

What is interesting about this is that, for many LEAs, the existence of the Tribunal and the knowledge that they might be found wanting if taken to the Tribunal by parents, have led to significant changes in their procedures and their provision.

> *We keep up to date in what the Tribunal does, the sort of decision it takes.*[2] *We're interested in letting the way the Tribunal works affect our practice as well... We would, in a sense, let the Tribunal be an imaginary Tribunal sitting here. We would often in panel be saying: 'What would the Tribunal make of this, what we decided?' So it does affect us a lot. We are thinking through the logic of the Tribunal, so that affects our decision for the better, I'd say.*
>
> (Officer, LEA with no Tribunal cases to date)

> *If we are looking at SEN, we will think about the Tribunal. It focuses your mind on the parent issue. It is a reminder behind you.*
>
> (Officer, new unitary authority with no Tribunal cases to date)

♦ The Tribunal leads LEAs to re-examine their relationships with parents

The Tribunal has encouraged LEAs to think through the ways in which they communicate and liaise with parents. Many appointed a Parent Partnership Officer when the funding was made available through GEST, and some LEAs, as described in the previous chapter, have maintained this post. All the officers interviewed reported that they had good relationships with parents, even though many of the LEAs had a high rate of appeals. In one LEA ,where the appeal rate had increased sixfold between 1995 and 1997, an officer said:

> *We try very hard. I have four named officers and they do try hard. And they succeed. Many parents are on first-name terms with them and parents trust them.*

But he added later:

> *Our main weakness is in mediation. We are looking at ways of introducing mediation, but it is a tricky one because we don't want to obscure parents' right to appeal. We follow the law (I'm not suggesting that other LEAs don't) but when we issue a draft statement*

[2] *The Tribunal produces a Digest of Decisions which it makes available to LEAs.*

or a letter concerning an assessment decision, we tell parents that, if they are not happy, they have the right to appeal and we tell them how to do that. Some people might think this is a little abrupt, but we don't want to obscure parents' rights.

Officers in a number of LEAs reported that they had changed their 'take it or leave it' stance towards parents after the production of a draft statement because they had realised that it is more useful to continue to negotiate with parents right up to the date of any Tribunal, in order to resolve disagreements:

I have found Tribunal-related work difficult, but, on the whole, I've enjoyed it. In those cases, I would far rather speak to a parent face-to-face to avoid mixed messages. Sometimes, when parents are wobbling about whether to go further, I think it is worth making the effort to see them.

In another LEA, an officer described how the LEA had acted to improve the statutory assessment procedures in order to limit the number of appeals:

We had a situation where only four per cent of statements were being processed within six months. That figure is now over 90 per cent. Statements were being put in the post – now they are hand-delivered. It was felt that this was the best approach, so we had to increase our admin. structure. So, the two named officers come from an admin. background – their role is to befriend, put across options in a way that doesn't present a vested professional interest. They are not acting independently, like PPOs, but it works well. Not all parents want it, but for others it is very important. Parents do feel they can ring them up at any time. So the draft statement would be hand-delivered and talked through. If parents have preferences, these can be aired at an early stage. Also, the views of the LEA are put across, so there shouldn't be any surprises on either side. It is a sharing of views. That is why it is so important that the admin. officers attend the panel meetings – so they are very clear on the LEA view and get the correct messages across.

Thus, the concern here is to head off potential conflict by ensuring that the LEA's view is put over to the parents, while, at the same time, ensuring that the LEA knows what the parents' expectations are. This allows the LEA to maintain the initiative in its negotiations with parents.

♦ The Tribunal gives parents a voice

If negotiations between LEAs and parents fail, and parents feel that their voice has not been heard, the Tribunal offers them the opportunity to state their case and present evidence to support it. Given the unequal power relationship between parents and representatives of the LEA (whether officers, professionals or elected members), the presence of the Tribunal ensures that, if LEAs have made wrong decisions or abused their power, parents will have the opportunity to challenge. Although this is uncomfortable for LEAs, many respondents acknowledged that it was an important aspect of the democratic process.

We felt that the Tribunal went very well. We liked the way they questioned everybody and took breaks during the proceedings to see if we and the LEA could come to an agreement. (parent)

The Tribunal was very good. We were amazed how much they knew about the case. (parent)

♦ The Tribunal acts as an objective arbitrator between parents and the LEA

The Tribunal's independence and objectivity were not questioned by respondents, even those who had not agreed with its decisions. In some cases, the LEA officers welcomed the opportunity to have an independent view and to have the decision in a difficult case made for them.

We have one case about to come where the LEA is in direct conflict with the parents and all the advice we have received too. That is where the SENT comes into its own as an independent body.
(LEA officer)

However, this can lead to a mindset where officers who are in conflict with parents stop negotiating at a relatively early stage and leave it to the Tribunal to sort out their problems with parents. This was reflected on by one officer:

When I talk to other LEAs they think: 'That's their [parents'] *view and that's our* [LEA] *view – we'll let the Tribunal sort it out.'*

This, however, is becoming a costly strategy, in terms of staff time and ultimate cost of provision, so most LEAs try to continue to negotiate with parents right up to the point of the hearing:

Can't honestly say we have done a lot to make this happen [avoid appeals]. *We do now say 'Come and talk to us before you put in an appeal'. We are looking at ways of introducing mediation at an early stage. Of course, we only go to appeal if we think we have a good case. We do concede to parents if we think that, on reflection, or on production of more evidence, they are right.*
(SEN officer, LEA with a high level of appeals)

♦ The Tribunal has made LEAs aware of the need for closer liaison with schools

Schools are in the front line as far as identifying and supporting pupils with special educational needs are concerned. An LEA's policies about all aspects of special education — thresholds for assessment, inclusion, support at various stages of the Code of Practice — are crucially dependent on the active cooperation and involvement of schools. The LMS reforms have meant that schools and LEAs have, in many cases, become less closely aligned and this has made it difficult for LEAs to present a coherent message to parents about special educational needs. LEA officers perceive this as a problem and have recognised the importance of getting the support and cooperation of schools in order to implement their SEN policies.

♦ The Tribunal has made LEAs more aware of the need to monitor the quality of their provision

A number of appeals have been on the grounds that the LEA schools (including special schools and units) were not offering a good quality of provision. LEAs have become much more aware that their responsibility for pupils with special educational needs does not end with placement, and that parents will expect their children to make progress once their needs have been identified and a statement provided. Sometimes parents have appealed against a named school in advance of the placement of their child because the school concerned was not offering what the parents felt the child needed. In order to defend a placement decision, officers need to be sure about the nature and quality of the special education their schools are offering,

> *We have inspected five of the eight specific learning difficulties centres in the last three terms. A report goes to the LEA and to the school governors. So it has focused our attention on the LEA's role in monitoring and reviewing the quality of provision. We have to be able to demonstrate the quality of that provision over and above mainstream school and against the provision available in the independent schools.* (LEA officer)

Sometimes, parents appeal once their child has been placed in a school, if they think the school is not meeting the child's needs adequately. In the case of Oliver, described in Chapter 4, the parents lodged an appeal because they felt that his needs were not being met in a unit attached to a mainstream school. In another case, the parent appealed because her child was placed in a unit for pupils with speech and language impairment, but no speech therapy was available.

The trend towards unit provision has been a feature of special education over the last decade, but there is a growing awareness that the success of the provision depends both on the quality of education in the mainstream school and on the specialist support available in the unit. As one officer put it:

> *What has changed is our understanding of other factors.... If the quality of teaching in mainstream is questioned, then we have to consider if SEN provision should be elsewhere... We are now trying to improve the quality of that resource base... We will now monitor our resource bases.*

♦ The Tribunal has brought about closer liaison between LEAs and the voluntary sector

There is often an ambivalent attitude among LEA officers to the voluntary sector. On the one hand, they recognise the useful work the voluntary organisations do in supporting parents and providing expertise on special educational needs. On the other hand, they are wary of the pressure that voluntary organisations can bring to bear on them and their decision-making. Most of the LEA officers in the NFER study felt that they had good and productive relationships with the voluntary organisations when it came to

general discussions about special educational needs and provision. However, they were wary when voluntary organisations acted as advocates in individual cases. The following remark is typical:

> *We have a very strong voluntary sector that has strong relationships with the council. We tend not to meet with the voluntary sector in Education. We meet with parents rather than representatives... We will attend their meetings. I'm not interested in lobby groups – not popular with some colleagues because of that. I'll meet any group and talk to them, but don't go out of my way to maintain contacts.*
>
> (SEN officer, LEA with low rate of Tribunals)

There is a feeling among some LEA officers that some voluntary organisations represent the interests for a small segment of the population and will skew resource allocation away from the most needy. The LEA is presented as considering the needs of all, whether or not they have an advocate:

> *The LEA has to look at the 20 per cent, not just the 2 per cent. We have to have a policy and not be open to selling out to a pressure group. I feel it is important to treat those who are articulate just the same as those who are not able to articulate their needs. In fact, it is our job to speak for those who cannot speak for themselves. It's the old thing of the greedy versus the needy. I think you have to give the same respect to all sections of the community.*
>
> (SEN officer, LEA with a high rate of Tribunals).

♦ The Tribunal has led to awareness of the need for more collaboration between LEAs and other statutory agencies

The division of responsibility for provision between LEAs, Social Services Departments and Health Authorities and Trusts has led to a number of appeals to the Tribunal. In some cases, such as that of Carl, described in Chapter 5, the child's need for a 24-hour curriculum has been challenged by the LEA, but the family's needs have been taken into account by the Tribunal and this has led to an awareness that Social Services should be involved when there is an issue of residential placement for family reasons to be discussed.

The problem of securing services controlled by health trusts or health authorities, such as speech therapy and physiotherapy, is a longstanding one in special education. LEAs are now mandated to fund these therapies when they are part of the educational provision recommended in the statement. Many are still reluctant to do so, since they view this as a Health Service responsibility and feel that it should be funded by the Trust or Health Authority. However, Tribunals can order LEAs to fund the provision, whereas they have no remit as far as the National Health Service is concerned.

It is therefore important from a funding point of view, as well as being good practice for children who have complex social or medical problems which affect their special educational needs, that LEAs collaborate and communicate with other services (Dyson *et al.*, 1998). However, there still appears to be a reluctance on all sides to enter into dialogue:

Social Services and Education are both part of the County Council and so the relationship is easier than that with Health where we have no control or say in what goes on. Our differences with Social Services are over who pays. Health pay for very few placements and contribute very little towards any. (SEN officer)

Conclusion

LEA officers and parents identified some very important and valuable impacts of the Tribunal on policies and practices in LEAs. What follows is an account of some of the more negative aspects of the Tribunal. These may tend to overshadow the positives, for some LEAs, but it is important to balance the two aspects and not to lose sight of the contribution the Tribunal has made to improvements in decision-making in LEAs.

Negative impacts of Tribunal decisions

♦ The Tribunal takes up a disproportionate amount of officer time

Even in LEAs which have a low rate of appeals, Tribunal cases can take up an inordinate amount of time. Some cases are extremely complex, but, even when they are not, the time spent on them deflects officers' energies away from their core tasks:

For my part, the time taken is absorbed into my work load and I couldn't begin to estimate the financial cost of that. Things have just had to be shunted along the line. There is no such thing as additional money for it. It is a great pity we can't quantify that for you, because it's all well and good for the SENT to talk about costs, but there should be some recognition of the amount of staff time. Even those cases that don't end up going to a hearing take up a great deal of time and it's all unseen.

(SEN officer, LEA with low rate of Tribunals)

Appeals are very disruptive of our work because the volume and cost is unpredictable year by year. They take up a disproportionate amount of our time. (SEN officer, LEA with an average rate of appeals)

One LEA in the NFER study had appointed a Tribunals Officer, one of whose responsibilities was to prepare the LEA's case for the Tribunal. The SEN officer explained why the post was developed:

I was working a 60-hour week just to keep things on an even keel. There was no time to pursue cases in terms of effective communication and doing all that might be done to avoid them [appeals]. *Essentially that was acknowledged in the reorganisation and it was felt that the Tribunal issue warranted a fairly senior manager to deal with it.*

Most LEAs, however, see the work involved in Tribunals as part of the job of those involved in the processing of the statutory assessments, and this focuses the attention of those doing that work on the necessity of negotiating with parents and keeping them well-informed.

Nevertheless, there is also a personal and emotional cost for those involved. They sometimes feel that their professional judgement is being challenged and that they are subjected to undue pressure by participation in the Tribunals, particularly in cases where parents have employed lawyers and expert witnesses whose task is to undermine the authority's case. The adversarial nature of some Tribunal hearings is one aspect which LEA officers do not feel happy about:

> *One officer came back saying: 'I feel like a Kray twin', because the tone of the hearing had been so negative towards the LEA.*
>
> (SEN officer)

Another said, of a particularly difficult case in which there had been two Tribunals and a court case:

> *I am quite a strong character but there were times when I felt psychologically that stress levels were beyond all reasonableness... There were weeks and weeks of my time consumed in it all. I could not begin to calculate that. Do you count the hours I laid awake at night before going to court? A lot of worry and stress...*

On the whole, though, as described in the section above, most respondents had found the conduct of the Tribunal hearings fair and not unduly harassing. The following comment from an officer in an authority with a high level of appeals sums up the general feeling;

> *We have always found the personnel very fair, polite and helpful. They are charming people. They bend over backwards to do their best. The atmosphere at hearings is always very pleasant and extremely well-handled.*

Generally, it is the approach and activities of some of the voluntary organisations and the involvement of the legal profession which LEA officers find distressing and confrontational and which lead to bad experiences of the Tribunal.

♦ The costs involved in defending cases are high

Alongside the issue of time is the issue of the cost of defending cases. As pointed out by one of the respondents quoted above, it is probably too difficult to calculate the cost of officer time with any degree of accuracy. Tribunal cases also involve the cost of the time of the LEAs' witnesses, such as educational psychologists and headteachers, particularly if headteachers ask for supply cover. LEAs tend to try to avoid the use of their legal departments, as this is very expensive and not recommended by the Tribunal. Most LEAs prefer a low-key approach, so they will only use lawyers if the parents are using them and there is a potentially expensive outcome if the Tribunal decision goes against them. The costs of Tribunals are generally absorbed by the SEN budget, which means that if there are a high number of Tribunals, the amount available for other services is depleted. One LEA in the study took a decision to invest in extra staff to *avoid* Tribunals:

> *I wrote a letter to the TES saying that this has been a very cost-effective project and would be for any LEA. Ours costs £50,000, to*

set against just two or three appeals in a year. It more than pays for itself, if that's how you're measuring it.

(Officer, LEA with no Tribunals to date)

♦ Some Tribunal decisions have had a massive impact on resource allocation

The cases which most disturb LEA officers are those where LEAs have been required to fund highly expensive provision, which they do not think is justified. These are the cases which most undermine the credibility of the Tribunal in the eyes of LEAs, and almost all the LEAs in the study had isolated examples of decisions which they felt were arbitrary or unfair. Mostly, they concerned provision in expensive residential settings, often in the independent sector and often where parents had already placed their child or had used the services of a solicitor or barrister to argue their case.

Some examples

1. Maria, now aged seven, had been in the LEA's school for pupils with physical difficulties from the age of four. Her mother asked for a reassessment and wanted placement in a residential non-LEA school. The LEA would not agree as there was nothing in the assessment advice which suggested the child needed a 24-hour curriculum. At the Tribunal, a derogatory report on the LEA school was presented by a representative of a voluntary organisation (the school later received a very good OFSTED report). Although there was no evidence that the child needed a 24-hour curriculum, the Tribunal decided that the LEA school could not meet her needs and ordered the LEA to name the residential school. The LEA decided to appeal to the High Court and, reacting to the unfavourable report about the LEA school, and because the LEA had offered no alternative, the judge confirmed the residential placement. The LEA then decided to appeal to the Lords of Session in the High Court and the previous judgment was reversed and the case was remitted to be heard by a different Tribunal. In the mean time, the child was being educated at the residential school, at a cost of £40,000 per annum, compared with £7,500 at the LEA school.

2. Helen, a child diagnosed with autism, moved into the LEA as she was rising five. The family had been funding a Lovaas programme and wanted the LEA to take over funding of this when she began school. The previous LEA had written a draft statement which did not include Lovaas and the current LEA agreed with this. The parents wanted the LEA to fund 30 treatment hours per week by a Lovaas-trained classroom assistant in the mainstream school, a programme during the holidays (Lovaas is a 50-week per year programme), two hours per week supervision of the classroom assistant by a Lovaas specialist and two visits per term from a Lovaas consultant from Norway.

   The LEA's opinion was that it was not practicable to offer the programme in school and not the best way to meet Helen's needs. The LEA was also unconvinced of the efficacy of the Lovaas approach. So the case went to the Tribunal, where the parents were represented by a barrister who specialised in autism cases. The Tribunal found in the parents' favour. However, it proved very difficult to implement the programme successfully in the mainstream school, since there were difficulties between the Lovaas worker and the school. Eventually, the child was taken out of school by her parents and the LEA is trying to find another school to take her. The current cost to the LEA is £13,500 per annum.

In one LEA, there were eight cases of pupils with specific learning difficulties where the Tribunal had upheld the parents' request for residential independent schools. The long-term cost implication was calculated by the SEN officer as £1.5 million. She commented: 'That is an immoral amount of money.'

- **The Tribunal's decisions are focused on individuals and do not take into account the wider remit of the LEA to provide support for all children**

The main problem that LEA officers perceive with the Tribunal as a final arbiter of their decisions is that it does not take into account the wider implications of its decisions for LEAs. LEAs' budgets are limited, and therefore have to absorb the extra costs of very expensive provision. The tension between decision-making for individuals and for pupils with special educational needs as a whole is brought into prominence by some of these cases. LEAs tend to argue that they are bound to consider value for money when making their decisions, but the Tribunal does not make this a priority when considering the child's circumstances and needs as presented by the parents and their advisers. This leads to some decisions which LEAs perceive as inequitable. In one LEA, the officer told of two pupils with very similar needs placed in the same LEA school. Both were the subject of an appeal for residential placement. One, a middle-class white family, who employed a solicitor to speak for them, got what they wanted. The other, a black single mother with no legal representation, did not. The officer felt that the crucial difference was the resources which the successful family could bring to make their case

- **Tribunal decisions sometimes conflict with the policy aims of the LEA (e.g. regarding reduction in statement rates or increasing inclusion)**

There is often a rise in the number of appeals by parents following a change in LEA policy. Two common examples are reducing statements and increasing inclusion. On the whole, LEAs have found that if their policy direction is well-articulated and backed up with resources to ensure that pupils' needs can be met, although there may be more Tribunal appeals, these will not necessarily be successful for parents (see Chapter 5). LEA officers did express worries that they would not be able to reduce statement rates to the Government's target of two per cent because of the threat of appeals, but gave no evidence that they had a well-worked out policy decision with a strategy for its implementation which was being undermined by the Tribunal.

'Misuses' of the Tribunal

- **The role of some voluntary organisations**

It was reported by some LEA officers that certain voluntary organisations appeared to have a vested interest in causing conflict between LEAs and parents and supporting unrealistic demands of parents for provision. One LEA officer felt that his authority had been singled out and that the voluntary organisation concerned had decided to make an example of it. Others claimed that some

voluntary organisations were offering parents cut-price places at their schools pending the decision of the Tribunal. It was claimed that some voluntary organisations advised parents not to continue to negotiate directly with the LEA, but to communicate only through a solicitor. It is not clear how far these perceptions reflect a general trend, but they are an indication of a level of suspicion and mistrust of some of the more campaigning voluntary organisations. They probably also reflect the vulnerability some LEAs feel about the adequacy of their provision for some types of special educational needs.

♦ Parents use the Tribunal to have their child's school fees paid

A number of LEAs gave examples of instances where parents had children in independent schools and had requested assessment for specific learning difficulties. The LEA had then been obliged to fund special educational provision. (See the case of Oliver in Chapter 4.) In some cases, the parents had never used the LEA schools, and the officers concerned had no knowledge of the parents or their children.

> *I suppose one difficult area in relation to the Tribunal is we have a reasonably high number of parents who go to Tribunal whose children are in independent schools and we don't have much relationship with the parents at all because they're not known to our headteachers or teachers or to our EPs.* (SEN officer, London borough)

> *Some parents are used to using the independent sector for their children so do not see why the trend should be any different for SEN – but with LEA funding, of course! They have this belief that independent equals better-quality education.*
>
> (SEN officer, shire county)

It appears that, when reaching their decision, the Tribunals take into account the detrimental effect of moving children once they have settled in a school and are making progress. So parents who have the resources to place their children in the school of their choice in advance of the Tribunal are in a good position to obtain what they want.

♦ Parents use the Tribunal to circumvent LEA rules on school choice

Some LEA officers reported that parents had used the Tribunals to obtain their choice of mainstream school, thus circumventing the LEA criteria for parental choice. Tribunals can direct an LEA to name a school on the statement and, if the school is named, it has to accept the child. Thus, in areas where popular schools are over-subscribed, children with statements can have an advantage over children who have to go through the normal application procedure.

Equity issues

Running through many of the comments of LEA officers about the impact of the Tribunal is a perception, implicit or explicit, that many of the Tribunal decisions have implications for the equitable use of resources. In some cases, the issue is one of the effect of the cost of provision for one or two pupils on the ability of the LEA to provide adequately for others for whom it has responsibility. But there is also a feeling that the use of the Tribunal is dominated by middle-class articulate parents whose children are getting resources at the expense of equally deserving children whose parents are not so skilled at advocacy.

> [Socio-economic status] *is a factor. Every case the LEA loses reinforces this. There are very astute parents who know there's everything to gain and nothing to lose by going to the Tribunal. There's a very heavy dinner party network among parents. There's a high level of knowledge about the law and their rights and using the Tribunal to get more for their children. For them, it is a very natural occurrence, going to the Tribunal.*
>
> (SEN officer, LEA with high level of appeals)

> *I know in neighbouring boroughs they just settle, they just give people what they want. That just totally smacks of inequality. It means that the articulate, pushy, middle-class parents steal the resources that other parents don't even know are there.*
>
> (SEN officer, LEA with a high level of appeals)

However, although there appears to be a link between the social characteristics of parents and their propensity to use the Tribunal, it is not so clear-cut in some LEAs. For example, in one LEA with a high level of appeals, the SEN officer said:

> *We have not done a post-code analysis, but my view is that, as far as I can tell from my knowledge of* [the LEA] *and from my memory, appeals do not come from one section of the community more than from others. But we did suggest to the SENT that it would be worthwhile to do such an analysis.*

It would be unusual, given all the evidence which suggests that middle-class families benefit more than others from the Welfare State in general (Wilkinson, 1994), and from the education service in particular (Mortimore and Whitty, 1997; Smith and Noble, 1995), if it were not the case that the use of the Tribunal was skewed towards middle-class families. The question is whether improvements in services and levels of support gained for some children through the actions of their parents will result in a better service for all pupils.

Summary and conclusions

A number of concerns about the impact of the Tribunal were related to issues of the equitable distribution of resources. It was felt, by some officers, that Tribunal decisions had skewed resource allocation towards one or two cases with the result that there was less available for the majority. The costs involved in defending appeals, both financial and in time, were also mentioned as detracting from the effective management of the special educational service. Thus, the Tribunal was seen as placing constraints on the LEAs' ability to make policy decisions and to plan effectively their SEN strategy.

However, it appeared that significant negative impacts of the Tribunal, in terms of cost and unfair allocation of resources, although seen as frustrating, were relatively rare in terms of LEAs' overall experience of the Tribunal in operation. This was demonstrated in answers both to the questionnaire, reported in Chapter 3, and in relation to LEA officers' overall assessment of the impacts of the Tribunal, presented in Chapters 4 and 5 of this report.

Chapter 7 — Factors which Influence the Levels of Appeals

As discussed in earlier chapters of this report, there are both structural and process factors which seem to be associated with high or low levels of appeals to the Tribunal. There are some factors which LEAs can influence, and others which are out of their hands. This chapter will synthesise some of the key findings of the research in terms of what LEAs can do to minimise the levels of appeals they experience.

Factors which are associated with lower levels of appeals

♦ Promoting good relationships with parents

Staffing levels

Having an adequate level of staffing seems to be a prerequisite for forming positive relationships with parents. Several respondents reported that poor relationships had come about because there were not enough staff to spend time discussing parents' concerns. Those LEAs with good relationships had appropriate levels of staffing to cope with the workload.

Accessibility of staff

LEAs which provided open access to SEN officers appeared to have fewer problems. This meant that parents could telephone, call in to the office, or be visited in their homes, as appropriate. This again implies an appropriate level of staffing to enable this level of personal attention to be offered.

Hand delivery of key documents

LEAs which arranged hand delivery of the proposal to assess and of the draft statement and gave parents the opportunity to discuss these with LEA staff appeared to have fewer problems. LEAs used a variety of staff to do this – Education Welfare Officers, SEN administrative staff, Educational Psychologists, Parent Partnership Officers. The important aspect of this work was that it enabled good communication between the LEA and parents and allowed the LEA to sort out any problems or misconceptions at an early stage.

Flexibility and a non-doctrinaire approach

Some LEAs had tended to be rather inflexible in their approach to meeting special educational needs and had not been willing to compromise. For example, one LEA had a policy of not placing children outside its boundaries, and this had led to a number of appeals. Such a policy was not sustainable, particularly in view of national polices about school choice, which do not confine parents to choosing within LEA boundaries. LEAs which are flexible in accommodating parents' wishes can still be guided by a set of overarching principles about cost-effectiveness and quality of provision but, within these, be prepared to listen to what parents want.

A source of semi-independent advice and support for parents

The role of the PPO or an equivalent was seen as a positive factor in promoting good relationships. In some LEAs, this appeared to be a double-edged sword, since there tended to be a higher rate of appeals in LEAs which had such a post. It seems to be important that the PPO is part of the support system for parents and is not used as a buffer between those making decisions about children's needs and parents. There is a dilemma between seeing the PPO role as a source of independent advice and support and enabling that person to act as an effective means of communication between the LEA and parents. In those LEAs which have lower rates of appeals, the PPO is part of a network of support *within* rather than *outside* the LEA special education section.

Positive relationships with voluntary organisations

Many of the LEAs with lower levels of appeals reported little or no pressure group activity from voluntary organisations. Some viewed their relationships with the voluntary organisations positively and used them as a sounding-board when developing new policies or provision. Parents were encouraged to contact voluntary organisations and also to form support groups with which LEA officers would have contact when invited. In these LEAs, voluntary organisations were seen as part of the community and as helping to promote good communication between parents and the LEA.

♦ Promoting good relationships with schools

Involving schools in policy decisions about SEN

Since LMS and the opportunity for schools to become GM, there has been a tendency for schools and LEAs to become distanced from one another. This has led to some misunderstandings and lack of communication between schools and LEAs about their relative roles and responsibilities for SEN. Some examples in the NFER research illustrated the necessity for LEAs to consult and involve schools when policies are developing. For example, if an LEA decides to try to reduce statements and to provide more resources at Stage 3 of the Code of Practice, it will need to explain this clearly to schools and demonstrate the practicability of the new policy, or it might experience a rise in the rate of appeals to the Tribunal for failure to assess. This happened in several of the case study LEAs. Some LEAs had set up a Heads Forum to discuss such policy issues and to develop agreed criteria for statutory assessment with moderation across schools.

Providing training for SENCOs

SENCOs have a key role in managing special education within their schools. Unfortunately, in primary schools, they often do not have sufficient time, training and support to fulfil the role adequately (Fish and Evans 1995). Some LEAs have provided extensive training and support for Special Educational Needs Coordinators and have found that this has increased schools' willingness to support pupils at Stage 3 of the Code and reduce requests for statutory assessment. This has helped to keep the level of appeals to the Tribunal low.

Supporting schools to meet SEN

In circumstances where a school's request for a statutory assessment has been refused, some LEAs offer extra support and advice to the school to support the pupil concerned. This seems to defuse tension between the school and the LEA and make it less likely that the school will encourage parents to appeal.

♦ Clear, effective and equitable policies and procedures for SEN

Policies based on shared values

The research indicates that, in order to minimise conflict and misunderstanding between parents, schools and the LEA, policies and procedures for SEN should be clearly articulated and accessible to all those affected by them. They should be based on values which parents, LEAs and schools can agree. LEAs which are proactive rather than reactive manage to keep the initiative and can defend their decisions by reference to a clear and well-thought-out values-driven strategy. LEAs which review their policies in the light of Tribunal decisions and learn from them are more likely to be able to avoid future appeals than those which stick rigidly to policies which have been demonstrated to be untenable.

Access to the assessment procedures

On the whole, those LEAs which had a higher rate of statements were less likely to experience appeals. LEA officers in those LEAs rarely refused to initiate an assessment, if parents had requested it. As argued earlier in this report, the level of statements is dependent upon the quality and accessibility of provision at Stages 1–3 of the Code of Practice, and this needs to be borne in mind by LEAs seeking to reduce their statement rate but not wanting to become involved in a high level of appeals.

A range of SEN provision suited to the needs of the population

The smaller, metropolitan LEAs were, in some ways, in an advantaged position, since they had access to provision in neighbouring boroughs and could be more flexible in their response than many of the shire county LEAs. Those LEAs which had a wide range of provision, including special schools, units, resource bases and support in mainstream were in a better position to be flexible than LEAs where there was a lack of infrastructure in terms of provision. In shire county LEAs, often the only alternative to LEA provision was provision in the independent sector and this was a source of many of the disputes with parents leading to appeals. It was reported that some of the more affluent LEAs with high-achieving pupil populations did not make SEN a priority and therefore had not developed a suitable range of provision.

Structural factors which affect the rate of appeals

♦ Level of affluence/deprivation in the LEA

The smaller metropolitan LEAs outside London and areas with a significant population whose first language is not English tend to have lower levels of appeals. Many of these LEAs also have relatively high numbers of parents who are materially and educationally disadvantaged. In terms of their aspirations for their children, it was reported that many parents in these LEAs have low expectations and want their children to be educated locally. Thus, they would not be inclined to challenge the LEA or to push for expensive non-LEA provision. The parents in these LEAs tended to trust professionals and leave decision-making to them.

Conversely, in the more affluent London boroughs and shire authorities, there are higher proportions of middle-class professional parents who often have the confidence and resources to challenge the LEA's decisions and to be specific about what, in their opinion, is necessary to meet their child's needs.

♦ Pressure group activity

Pressure groups are much more active in some LEAs than in others. This is, to some extent, related to socio-economic factors, in that middle-class parents are more likely to be active in such groups. There are active local pressure groups around such issues as provision for autism and dyslexia. There are also national groups, such as IPSEA, which support parents through the statutory assessment procedures. A number of LEAs have reported changes in their decisions which have been brought about by appeals to the Tribunal supported by active local and national pressure groups.

♦ Access to independent professional advice (lawyers, psychologists, specialists in specific disorders)

Again, this appears to be related to the social class of parents. In predominantly affluent areas, with a significant population of professional, middle-class parents, LEAs have been more likely to experience Tribunal appeals where parents have been able to assemble a great deal of professional expertise to help them put their case. In such cases, parents appear more likely to refuse to negotiate with the LEA and to take their case all the way to the Tribunal.

Summary and conclusions

The level of appeals to the Tribunal seems to be governed by a complex interplay of factors, some of which can be affected by LEAs and others which cannot. Positive factors which seem to lead to lower levels of appeals are:

- good relationships with parents
- accessibility and approachability of officers
- good support throughout the assessment procedures
- small LEA with a sense of local ownership
- good and supportive relationship between LEA and schools
- clear and equitable policies for SEN
- a good, flexible range of provision
- good relationships with local voluntary organisations.

Other factors, which LEAs cannot control, but which seem to be influential are:

- level of affluence or deprivation in the LEA
- ethnicity and minority language speakers
- presence or absence of a significant number of middle-class professional parents
- pressure group activity
- use of outside professional advice.

Each LEA will have to find its optimum way of working with parents of children with special educational needs. Officers, professionals and elected members will have to take account of their responsibilities for all the pupils in their schools. A high level of appeals to the Tribunal is a sign that there are pressures within the system which need to be addressed. This report has highlighted some of these and some possible solutions.

However, the evidence from the research also indicates that LEAs with low levels of appeals may also have issues to address. Not least of these is how poorer, less articulate parents might be enabled to participate more actively in the decisions made about their children's education.

References

AUDIT COMMISSION (1992). *Getting In On the Act. Provision for Pupils with Special Educational Needs: the National Picture.* London: HMSO.

AUDIT COMMISSION (1998). *Local Authority Performance Indicators 1996/97: Education Services.* Abingdon: Audit Commission.

DENMAN, R. and LUNT, I. (1993). 'Getting your Act Together. Some implications for Eps of cases of judicial review!' *Educational Psychology in Practice.* **9**, 1, 9-16

DYSON, A., MEI, L. and MILLWARD, A. (1998). *Effective Communication Between Schools, LEAs and Health and Social Services in the Field of Special Educational Needs* (DfEE Research Report 60). London: DfEE.

EVANS, J. and VINCENT, C. (1997). 'Parental choice and special education.' In: GLATTER, R., WOODS, P.A. and BAGLEY, C. (Eds.) *Choice and Diversity in Schooling: Perspectives and Prospects.* London: Routledge.

EVANS, J. LUNT, I. WEDELL, K. and DYSON, A. (1998). *Collaborating for Effectiveness: Empowering Schools to be Inclusive.* Buckingham: Open University Press.

FISH, J. and EVANS, J. (1995). *Managing Special Education: Codes, Charters and Competition.* Buckingham: Open University Press.

FLETCHER-CAMPBELL, F. (1996). *The Resourcing of Special Educational Needs.* Slough: NFER.

FLETCHER-CAMPBELL, F. AND CULLEN, M.A. (1998) *The Impact of the Delegation on Support Services for Special Educational Needs.* Slough: NFER

GOACHER, B., EVANS, J., WELTON, J. and WEDELL, K. (1988). *Policy and Provision for Special Educational Needs: Implementing the 1981 Education Act.* London: Cassell.

GREAT BRITAIN. DEPARTMENT FOR EDUCATION (1992). *Special Educational Needs: Access to the System: a Consultation Paper.* London: DfE.

GREAT BRITAIN. DEPARTMENT FOR EDUCATION (1994). *Code of Practice on the Identification and Assessment of Special Educational Needs.* London: DfE.

GREAT BRITAIN. DEPARTMENT FOR EDUCATION AND EMPLOYMENT (1998a). *Statistics of Education. Schools in England.* Norwich: HMSO

GREAT BRITAIN. DEPARTMENT FOR EDUCATION AND EMPLOYMENT (1998b). *Special Educational Needs in England: January 1997* (Statistical Bulletin 2/98). London: The Stationery Office.

GREAT BRITAIN. DEPARTMENT FOR EDUCATION AND EMPLOYMENT (1998c). *Fair Funding: Improving Delegation to Schools May 1998. Consultation Paper.* London: DfEE.

GREAT BRITAIN. PARLIAMENT. HOUSE OF COMMONS (1997a). *Excellence for All Children: Meeting Special Educational Needs* (Cm.3785). London: The Stationery Office.

GREAT BRITAIN. PARLIAMENT. HOUSE OF COMMONS (1997b). *Excellence in Schools* (Cm.3681). London: The Stationery Office.

GREAT BRITAIN. PARLIAMENT. HOUSE OF COMMONS. EDUCATION COMMITTEE (1996). *Special Educational Needs: the Working of the Code of Practice and the Tribunal* (Second Report). London: HMSO.

GROSS, J. (1996). 'The weight of the evidence: parental advocacy and resource allocation to children with statements of special educational need', *Support for Learning*, **11**, 1, 3-8.

HARRIS, N. (1997). *Special Educational Needs and Access to Justice: the Role of the Special Educational Needs Tribunal.* Bristol: Jordans.

KINDER, K., WILKIN, A. and WAKEFIELD, A. (1997) *Exclusion: Who Needs It?* Slough: NFER

MORTIMORE, P. and WHITTY, G. (1997) *Can School Improvement Overcome the Effects of Disadvantage?* London: Institute of Education, London University.

PARSONS, C. (1996) 'Permanent exclusions from schools in England in the 1990s: trends, causes and responses', *Children and Society* **10**; 3, pp 177-186

RIDDELL, S., BROWN, S. and DUFFIELD, J. (1994). 'Parental power and special educational needs: the case of specific learning difficulties', *British Educational Research Journal*, **20**, 4, 327-44.

SMITH, T. and NOBLE, M. with BARLOW, J., SHARLAND, E. and SMITH, G. (1995) *Education that Divides. Poverty and Schooling in the 1990s.* London: CPAG.

SPECIAL EDUCATIONAL NEEDS TRIBUNAL (1995). *Special Educational Needs Tribunal Annual Report 94-95.* London: SENT.

SPECIAL EDUCATIONAL NEEDS TRIBUNAL (1996). *Special Educational Needs Tribunal Annual Report 95-96.* London: Westex.

SPECIAL EDUCATIONAL NEEDS TRIBUNAL (1997). *Special Educational Needs Tribunal Annual Report 96-97.* Suffolk: DfEE.

TOMLINSON, S. (1982). *A Sociology of Special Education.* London: Routledge & Kegan Paul.

WARNOCK REPORT. GREAT BRITAIN. DEPARTMENT OF EDUCATION AND SCIENCE. COMMITTEE OF ENQUIRY INTO THE EDUCATION OF HANDICAPPED CHILDREN AND YOUNG PEOPLE (1978). *Special Educational Needs* (Cm.7212). London: HMSO.

WILKINSON, R.G. (1994) *Unfair Shares. The Effects of Widening Income Differences on the Welfare of the Young.* Ilford, Essex: Barnardo's.

WOLFENDALE, S. and COOK, G. (1997). *Evaluation of Special Educational Needs Parent Partnership Schemes. Research Report RR34.* Norwich: HMSO

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getting it right

The Special Educational Needs Tribunal was set up as an independent body to hear appeals from parents against LEA decisions about their children with special educational needs.

This NFER study of the impacts of Tribunal decisions on LEAs' policies and practices is based on a national survey and follow-up studies of 25 LEAs which had either an above- or below-average rate of appeals.

The study found that there have been both positive and negative impacts of the Tribunal on LEAs. On the positive side, the Tribunal stimulates LEAs to improve their decision-making processes and procedures in relation to schools, other agencies, voluntary organisations and parents. On the negative side, the Tribunal consumes a great deal of officer time and can lead to an inappropriate use of scarce resources.

LEAs which had a lower than average rate of appeals shared the following characteristics:

- good relationships with parents, schools and local voluntary organisations
- clear and equitable policies for SEN
- accessible and approachable officers
- a good and flexible range of provision for SEN.

This report will be of interest to all those working in the area of special educational needs: LEA officers; educational psychologists; headteachers and SENCOs; Parent Partnership Officers; voluntary organisations and parent groups. It will also be of interest to those involved in the continuing professional development of these groups of professionals and volunteers.

ISBN: 0 7005 1502 0
£6.00