

Item No. 7	Classification: Open	Date: 18 November 2024	Meeting Name: Education & Local Economy Scrutiny Commission
Report title:		Education, Health and Care Plans Update (November 2024)	
Ward(s) or groups affected:		All	
From:		Anna Chiva, Assistant Director SEND	

RECOMMENDATION(S)

1. Education and Local Economy Scrutiny Commission are asked to note the contents of this report and officers will be available at the commission meeting on 18 November to answer questions and support the commission in its work.

BACKGROUND INFORMATION

2. In December 2023 the Education and Local Economy Scrutiny Commission received a report on *Demand and Timeliness of Education Health and Care Plans*.
3. The December report set out the background to the current statutory arrangements for the local authority's role in assessing and ensuring support children and young people with special educational needs and disabilities (SEND) under the 2014 SEND Code of Practice (The Code).
4. The December report explained the broad approach to the provision of support for children with SEND. For most children support is provided through a *Graduated Approach* and what is commonly referred to as *Ordinarily Available Provision*.
5. The *Graduated Approach (figure 1)*, is set out in The Code and refers to additional support to meet an assessed need, provided within mainstream provision that schools or settings together with health and care providers are expected to provide for a child or young person through their existing universal funding and resource arrangements. This response is usually led and co-ordinated within the mainstream provision by the settings Special Educational Need Co-Ordinator (SENCO). Children receiving this level of support are statutorily referred to as in receipt of *SEND Support*.

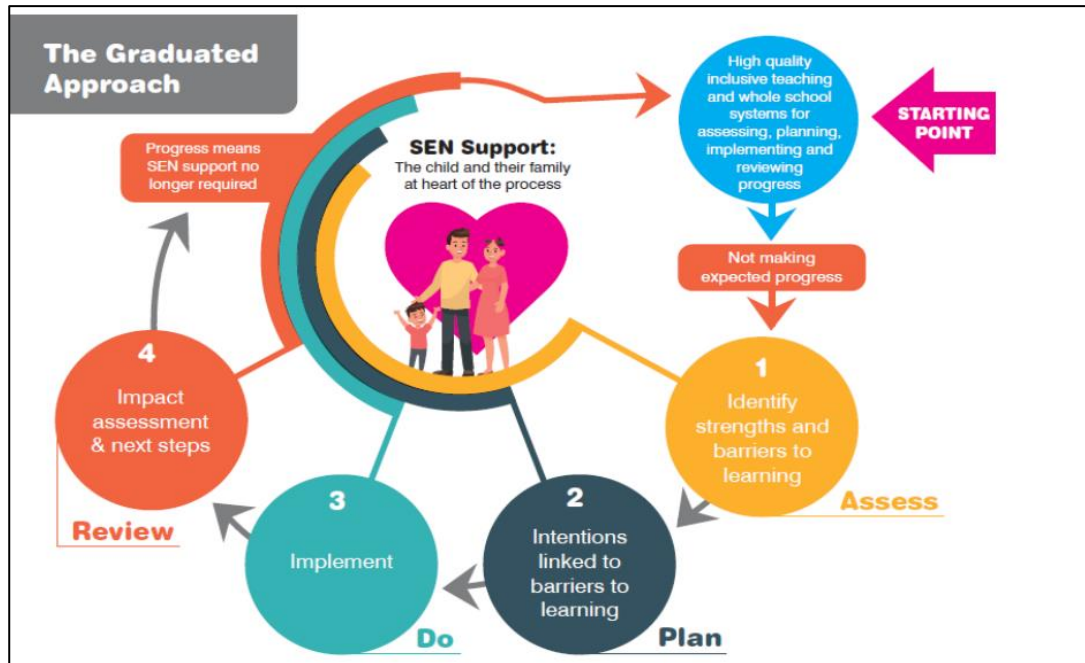


Figure 1: The Graduated Approach Model

6. The December report also sets out the approach to the statutory process for education, health and care needs assessment (EHCNA). The EHCNA is undertaken through a staged process with an overall requirement that from initial request to the issuing of a plan is completed within 20-weeks. This is the statutory 'timeliness' measure.
7. The EHCNA process is broken down into three stages (figure 4):
 - **Stage 1** - within 6 weeks of a request to assess the local authority must decide whether to carry out an EHC needs assessment. The parent, guardian or young person is also given the right to appeal that decision to the tribunal.
 - **Stage 2** - by 16 weeks the LA (local authorities) must have finished the assessment and decided if an EHCP is needed. We must send parents a draft plan or a 'feedback' and given them 15 days to comment and request a specific school. If issued with 'feedback' the parent, guardian or young person is also given the right to appeal that decision to the tribunal
 - **Stage 3** - by 20 weeks the LA must complete the final draft of the plan. All plans must be reviewed annually. The parent, guardian or young person is also given the right to appeal that decision to the tribunal.



Figure 2: EHCNA Process

8. This report provides information on the current local and national performance in relation to the delivery of EHCNAs. It includes information on the backlog and challenges as well as the planned improvement programme to address issues affecting performance.
9. This report also provides information on appeals relating to EHCPs, both local and the national context, as well as the role of the council's Legal Services.
10. The report also provides information on the spend of funding for children with SEND placed out of the borough.

KEY ISSUES FOR CONSIDERATION

Update on EHCPs

11. The rate of new EHCNA requests per 10,000 children aged 0-25 in Southwark had previously remained relatively stable, with a small 3% fall across the period 2018-2022.
12. In the last year there was a marked increase in new requests for assessment, with the rate in Southwark increasing by 39.5%, to 87 children per 10,000. This is 235 more requests for assessment than the previous year.



Figure 3: EHCNA Request Rates Per 10,000 population (0-25)

13. The December 2023 report noted that there has been an overall national deterioration in achieving the 20-week timescale for completed assessments. With the same trend occurring across London and in Southwark. Average timeliness across London fell by 12.1% between 2014 and 2022, to a low of 52%. In 2023 the average increased in London to 68% with the national rate standing at 49%.

14. The December report noted that the fall in timeliness had been particularly noticeable in south east London (SEL) authorities (Figure 8). Except for Bexley (82.6%), Southwark was the best performing SEL authority in 2022 at 48.4% compared to Lambeth at 15.8% and Lewisham at 40%, Greenwich at 34.5% and Bromley at 27.2%. This is shaped by the sustained increase in requests in recent years.

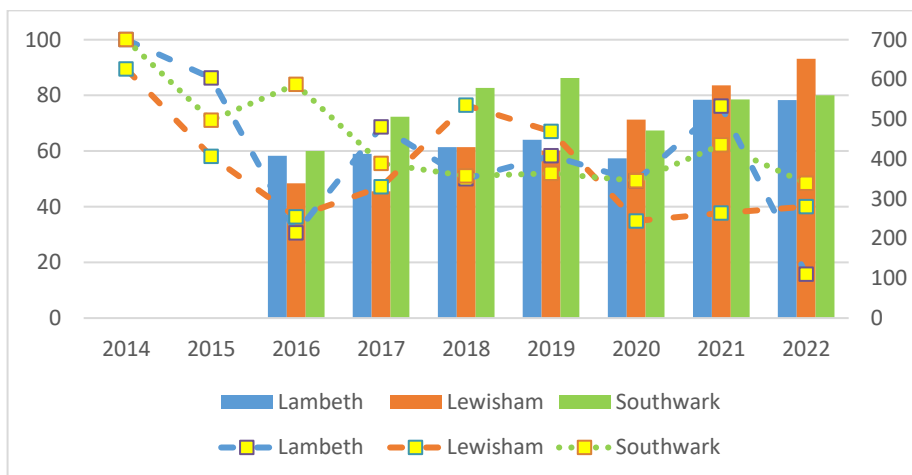


Figure 4: Timeliness vs New EHCP Requests

15. Over the last 12-months there has been significant investment in addressing the timeliness of EHCNAs and this has started to show improvements in performance.

16. A systemic review of the SEND statutory services, procedures and structure has resulted in significantly improved timeliness. Key lines of accountability and a strong performance management culture is now well embedded in the service.
17. Investment in the team training has been thorough to improve knowledge and skills to create a culture of ownership and a more family centric approach. There is now a clear correlation between meeting statutory deadline and outcomes for our young people.
18. In September 2023 only 62% of open assessments were still within the 20-week timescale for completion. At the end of September 2024 90% of open assessments are still within the appropriate timescale (figure 5 below).
19. There are currently no assessments waiting for completion over 52 weeks, and there has been a 90% reduction in the number of assessments that have been waiting for completion between 30 and 52 weeks. This means that all of the EHCNAs that had previously been described as being in the *backlog*, meaning they are open and have been open more than 30 weeks, are almost completely cleared.

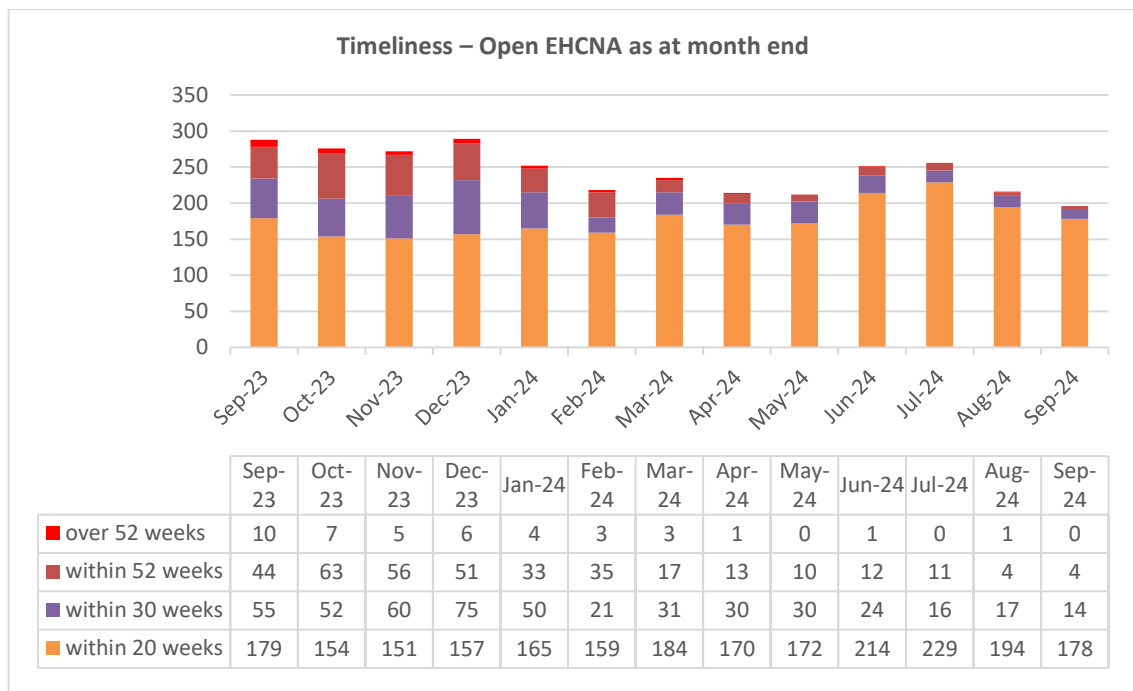


Figure 5: Open EHCNAs by current timeliness

20. There continue to be a small number of EHCNAs that are taking up to 30 weeks for completion and this is due to a variety of factors including assessment capacity within professional groups, available provision and the impact of the summer holidays on accessibility of young people in education settings.

21. Acknowledging there remain wider system issues which continue to impact on performance, the scale of the residual issues is significantly less impactful on the timely delivery of EHCNAs and the number of children and families waiting too long for their assessment outcomes is significantly reduced. The total number of overdue assessments having reduced by 86% since the high point in December 2023 (figure 6 below).

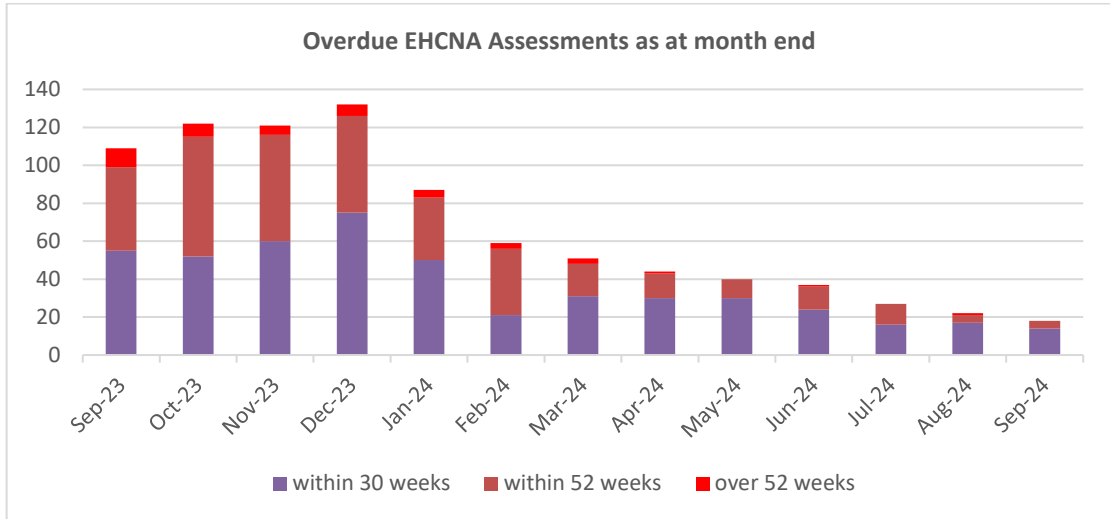


Figure 6: The number of EHCNA assessments which were overdue as at month end

22. As described above the council’s SEND service that manages the council’s statutory functions, has been through a root and branch re-design of the structure of the team and the associated processes, so that the team is enabled to meet its statutory requirements and is spending the proportionate amount of time on statutory activity. This has delivered key improvements in the following areas:

- Increase % of decisions are being made in a timely way
- Increase % of Draft EHC Plans being issued on time.
- Increase % of Final plans being issued on time

19. The EHCNA process is co-dependent on effective cross system working and collaboration. There continues to be challenges in this regard that are impacting performance and assessment timeliness, these are:

- Capacity of key statutory advice providers – educational psychology which is a local and national issue
- Joint commissioning arrangements with health partners
- Retention, recruitment and training of qualified professional groups such as Speech and Language Therapists, Educational Psychologists which is an acute local and national issues.

20. There is a broad correlation between the rate of Educational Psychologists in post per assessment completed in boroughs with the overall performance in delivering EHCNAs within timescale (figure 7 below).

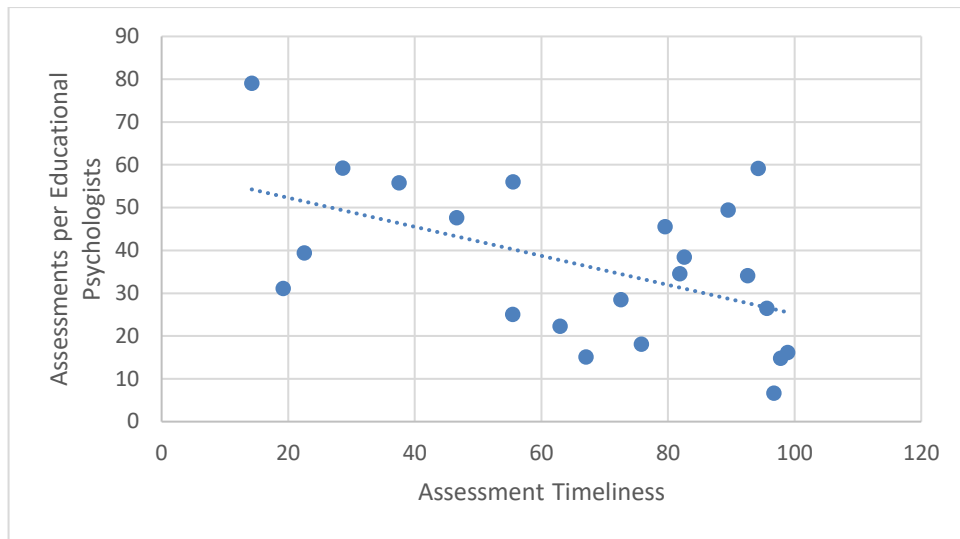


Figure 7: Rate of EPs per assessment against timeliness in London boroughs

21. The timeliness of partner professional responses to requests to input into EHCNAs is a critical factor in ensuring overall timeliness. This has been a persistent issue over recent years, and in particular during August and September this performance is often impacted due to the ability of professionals accessing young people in educational provision to assess their needs, this then creates a higher level of assessment activity in September and October which impacts the flow of work.

22. Again, as with the performance of internal services we are beginning to see improvements in partner performance and quality of contributions to EHCNAs. The Speech and Language Therapy Service at Guy's and St Thomas' in particular are a positive example of improving compliance, and steadily increasing timeliness, as a direct result of joint working between the SEND and GSST team. Whilst this is a positive overall performance remains too variable, and too consistently low (figure 8 below).

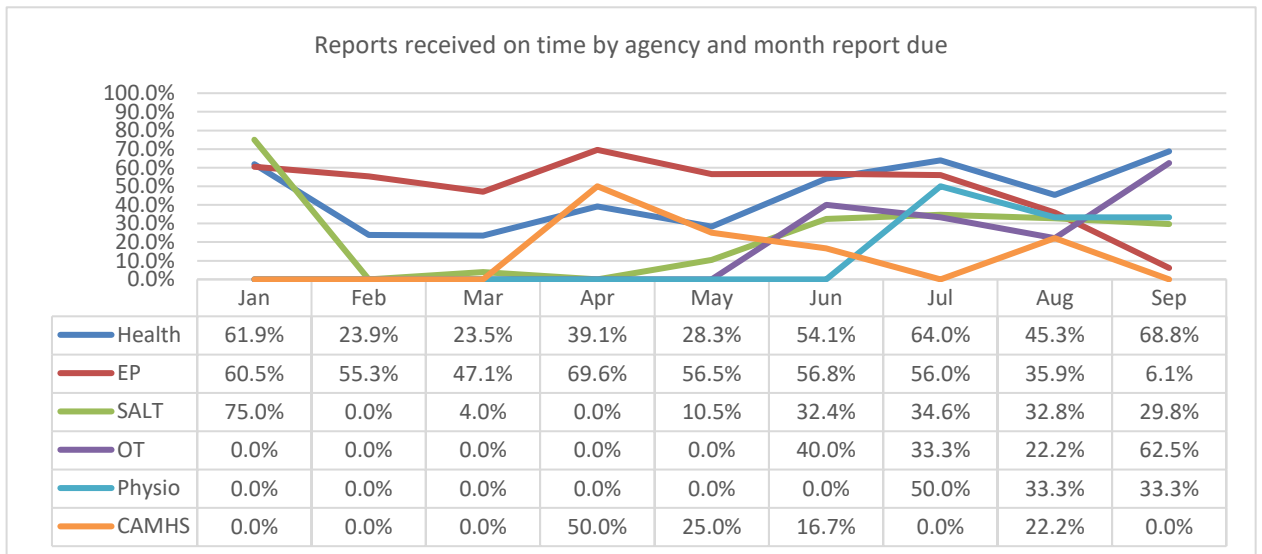


Figure 8: % of reports received on time by agency type (N.b. 0% performance often relates to no requests being made to that agency in a particular month)

Appeals

23. In the academic year 2022-23 there were 14,000 registered SEND appeals nationally. This was an increase of 24% on the previous year indicating systemic issues at a national level.

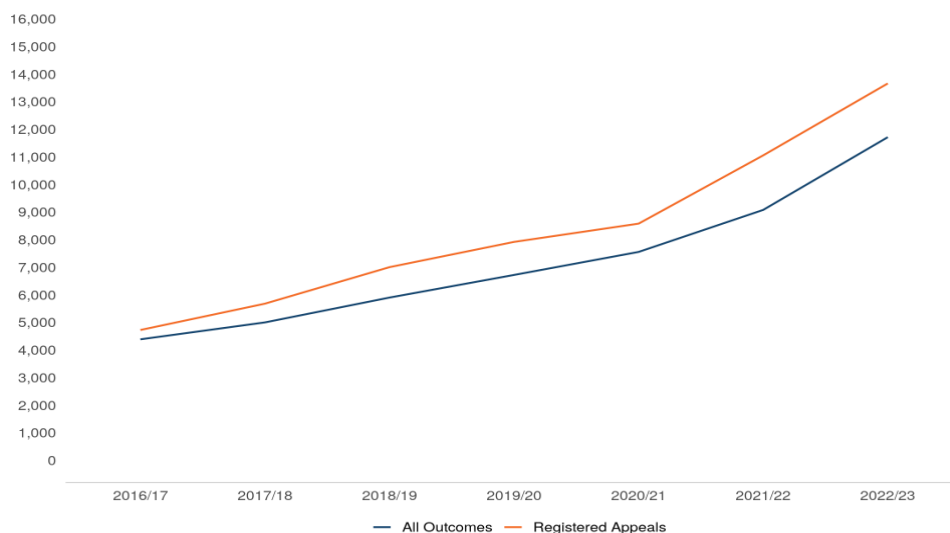


Figure 9: Number of SEN registered appeals

24. In the year 2023 the national average of appeals upheld in the local authority's favour was 1.7%. 17% of appeals were upheld in Southwark council's favour.

25. There are mainly two types of appeal, the first is about refusal to assess (RTA) and the second is appealing the content of the EHCP including the child's educational placement.

Refusal to assess appeals (RTA)

26. Refusal to assess represent 28% of all appeals submitted nationally versus 25% for Southwark.

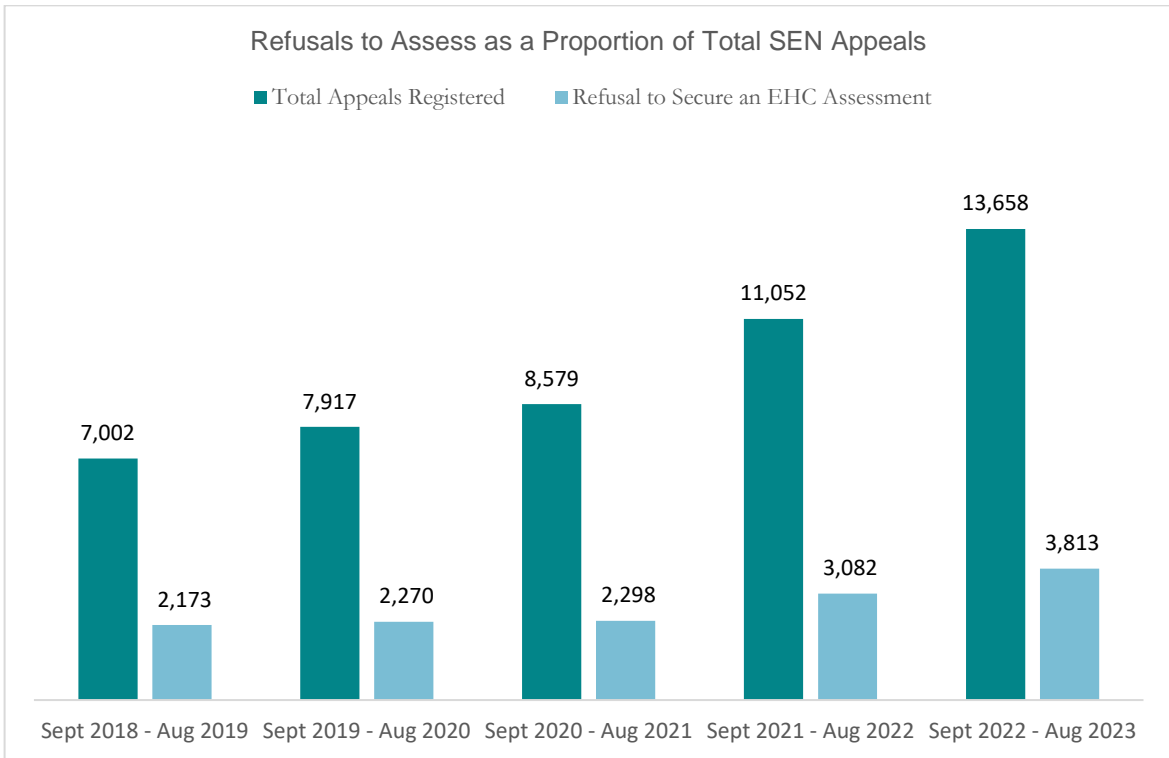


Figure 10: Refusal to assess as a proportion of all appeal

27. In 2022-23, 51% of RTAs were conceded compared with 50% for Southwark which is in line with the national average.

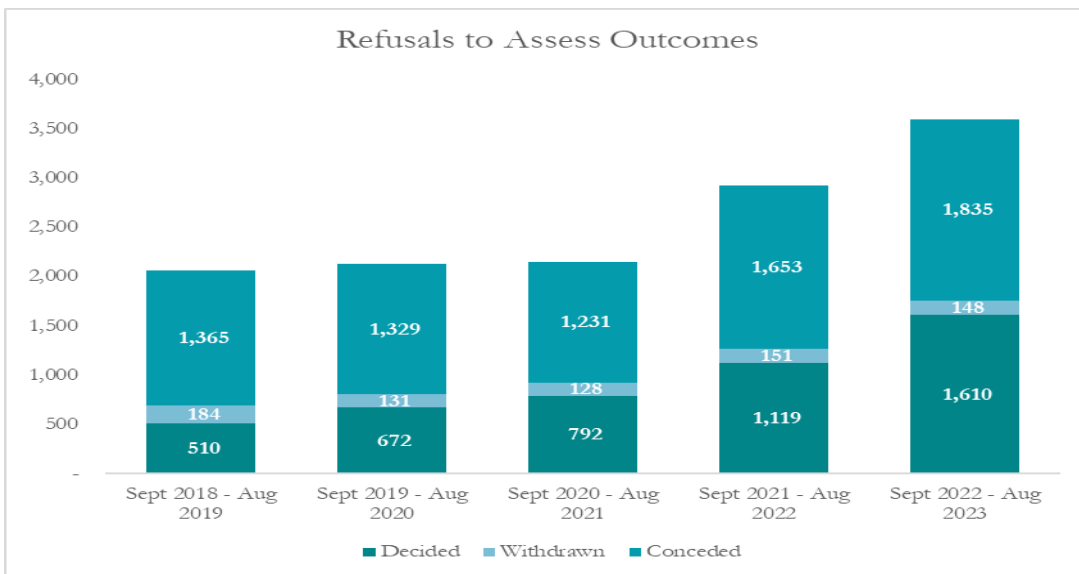


Figure 10: Refusal to assess outcomes

28. For the council there are a significantly higher number of RTA appeals this financial year compared with the whole of last year. There has been the same number of appeals in the first half of this year as there were in the whole of last year (table 1).

29. This is related to a number of factors, some of which are; parental confidence in the local offer and securing provision such as therapy, media influencing anxiety around school financial sustainability and seeking support through an EHC plan for mental health needs and broader care needs.

Outcome	April 2023 - March 2024	April 2024 – YTD
Refusal to assess (RFTA)	21 (2.6% of all assessments)	21 (4.5% of all assessments YTD)
Upheld in LA's favour	0	1
Conceded	14 (66.6% of registered appeals)	3 (14.2% of registered appeals)
Allowed/ upheld in parents favour	6	0
Still not heard	1	19 (Significant delay of appeals due to volume nationally)

Table 1: Appeals 2023-24 and year to date, with outcomes

Content of plan appeals in including child's educational placement

30. For the council, the number of appeals against the content of plans remain the significant proportion of appeals at 74%. These appeals often relate to most of the sections in plans, and the suggested provision and placement are usually contested.

31. If the council and family reach agreement on a placement, then the majority of the other areas tend to fall away and agreement is reached.

32. The majority of appeals relating to placement recommendations are where parents are seeking an independent placement, often out of the borough and at higher cost, and the council has a local school which it believes can meet the needs.

33. The local arrangement for joint commissioning of therapies at assessment stage are underdeveloped which means the council does not always have the ability to defend the appeal as cogently as it could have. This is because either the evidence is not sufficient, or the tribunal will not allow the council to assess the young person at a later date as it states this should have been completed at the initial assessment stage.

How appeals are legally supported

34. To meet the requirements, administer and defend the position of the council, the council's SEND Service has commissioned a legal firm called SV Law to administer SEND Appeals. The firm has been commissioned for the last three years. Prior to that appeals were managed by Southwark Legal Services.
35. Southwark Legal Services have no role with the SEND Service and their associated appeals.
36. As part of the redesign of the SEND Service, it will be decommissioning SV Law and creating its own Disagreement and Tribunal Service, with a keen focus on mediation. This new team should be in place by January 2025. The team will have a relationship with Southwark Legal Services to commission legal advice and representation as required.
37. The anticipated positive impact of an inhouse team is that they understand the services which supports children and families, have an integrated and pro - active approach to case management working closely with internal teams and a greater focus on mediation and resolution.

Funding provided to out of borough schools

38. The council is currently spending £19.7m, 37% of overall high-needs budget of the Dedicated Schools Grant (DSG), across 977 students attending provision outside of Southwark.
39. It is important to note that a significant number of those pupils attend schools and colleges in our neighbouring boroughs, which are likely to be closer to their own home address than comparable provision inside Southwark.
40. The makeup of the spend delivers a range of provisions, the significant proportion is on independent specialist provision pre and post 16 years old and further education.
41. Whilst independent providers are part of our local offer and we use them for some of our complex needs young people, the costs of these providers and services are increasing year on year.
42. The role of the council's SEND Commissioning Team is critical to delivering best value. Table 2 below shows how the spend is distributed for children with SEND educated out of borough.

School Type	Total Cost	Number of Pupils
Academy & free schools - mainstream	956,159	80
Academy & free schools - special	271,435	11
Academy & free schools – resource bases	165,207	9
Alternative provision & hospital schools	1,059,700	43
Non-maintained early years settings	96,795	1
Independent mainstream schools	1,818,575	56
Independent special schools	4,728,523	100
Other local authority - Mainstream	886,056	89
Other local authority - Special	2,920,805	125
Southwark maintained hospital school (OOB) - Bethlem	29,630	3
Further Education	3,381,535	228
Specialist Post-16 college	3,105,043	101
One of payments	563,288	159
Total	19,708,438	977

Table 1: Out of borough funding distribution

Key / Non-Key decisions

43. This report does not deal with a key decision

Policy implications

44. The SEND Team performs the statutory functions for SEND as set out in the Children’s and Families Act 2014 and the SEND Code of Practice 2015. The Team is not able to carry out these statutory functions in terms of new assessments and annual reviews at the current time. As a result, statutory national requirements and local policy standards are not being met.

Community, equalities (including socio-economic) and health impacts

Community impact statement

45. The effect of the current timeliness of EHCNAs and reviews on the SEND community of Southwark is impacting on our ability to consistently engender trust between the authority and our families which exacerbates issues of demand and further delays in ensuring appropriate support to children and young people. The approach set out in these reports aims to reverse the impact of these trends and ensure our families and community feel and are provided with nationally leading levels of support.

Policy Framework Implications

46. There are no policy framework implications

Equalities (including socio-economic) impact statement

47. The content of the report and the plans described to ensure the service offer improves will address the needs of a cohort of children and young people with protected characteristics and those who are commonly in the most socio-economically disadvantaged groups

Health impact statement

48. The content of the report and the plans described to ensure the service offer improves will support positive outcomes in the health of children and young people with SEND.

Climate change implications

49. There are no relevant climate change implications

Social Value considerations

50. There are no relevant social value considerations

Economic considerations

51. The content of the report and the plans described to ensure the service offer improves will ensure more support is available to children to prepare them for independence in adulthood and support their parents to access employment and training by ensuring their children are properly supported in education.

BACKGROUND DOCUMENTS

Background Documents	Held At	Contact
Demand and Timeliness of Education, Health and Care Plans	160 Tooley Street	Michael Crowe 0207 525 5000
Link: https://moderngov.southwark.gov.uk/documents/s117425/Report%20EHCP%20Scrutiny%20Report.pdf		

APPENDICES

No	Title

AUDIT TRAIL

Cabinet Member	Councillor Jasmine Ali, Deputy Leader and Cabinet Member for Children, Young People and Education	
Lead Officer	Alasdair Smith, Director of Children's Services	
Report Author	Anna Chiva, Assistant Director - SEND	
Version	Final	
Dated	8 November 2024	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Finance and Governance	No	No
Head of Procurement	No	No
Director of Law and Governance	No	No
Contract Review Boards		
Departmental Contract Review Board	No	No
Corporate Contract Review Board	No	No
Cabinet Member	Yes	Yes
Date final report sent to Constitutional/Community Council/Scrutiny Team	9 Nov 2024	