

Question 6: To what extent do you agree or disagree with our overall approach to strengthen redress, including through national standards and mandatory mediation?

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SNJ's response to Question 6

1. We disagree with this proposal.
2. We already have elements of mandatory mediation and have had since the reforms in 2014.
 - 2.1. Firstly, the requirement for parents and young people to obtain a mediation certificate before lodging an appeal.

- 2.2. Secondly, the mandatory requirement for local authorities to attend a mediation if the parent or young person requests one.
3. Point 2.1 always happens as parents are not allowed to register an appeal without a mediation certificate. This is completely pointless. If a parent wants to mediate and thinks it will work, they will. Demanding a certificate is simply wasting time.
4. Point 2.2 does not always happen. LAs repeatedly refuse to participate in mediation, or they send non-decision-makers, or they send barristers to argue their case which is against the entire principle. Why would making attending mediation mandatory for parents change an LA's behaviour when they already ignore this mandatory instruction? This is simply making it MORE difficult and time-consuming for a parent to get redress.
5. However, the Green Paper states that 'national standards' will set clear expectations about the timescale for mediation to take place and that LA attendees must be decision-makers. These are already regulations that are ignored, so this would change neither 2.1 nor 2.2 because there is no accountability when LAs decide not to participate.
6. The problem isn't lack of clear expectations but lack of compliance and as mentioned, accountability.
7. Where is your evidence for this proposition? We have asked this repeatedly and you have not shown any. So who decided that this was a good idea and on what grounds?
8. What research has been done on how these existing elements of mandatory mediation have been working for the past eight years? Changing something on a whim without evidence is rarely a sensible approach.
9. The Green Paper proposal that if mandatory mediation '*does not prove effective in strengthening earlier redress*', a possible additional stage, called '*independent review*', would be introduced as another mandatory step before an appeal can be lodged is another proposition that is inherently problematic and would delay access to redress for the following reasons:
 - 9.1. Who would sit on this "independent" panel? From where would they be sourced?
 - 9.2. Who would pay them if they were not already LA employees, which would make them not independent?

- 9.3. If they have no health or SEND expertise, how would they make an informed decision?
- 9.4. What timescale would this be? Do not forget that all the while this continues, a child is going without provision and a parent is under immense amounts of stress. Is this what you want? Parents giving up because they can't take any more? Parents on the brink of a mental health crisis? Marriages breaking up? Parents losing jobs because of stress or time needed to care for their child who may be out of school?
- 9.5. If a parent was part of a panel, who would pay for their time, and what training and support would be given?
- 9.6. If an NHS employee was part of a panel they would not be independent if health needs were discussed.
- 9.7. Given that the panel considered the case in the first place, sending it back to them is another unnecessary delay, as the outcome is unlikely to be different.
10. We, therefore, conclude that this is a proposal that brings no benefits but much unnecessary bureaucracy and delays.
11. Parents who decline to use mediation, do so because the LA is being unreasonable, because a relationship has broken down, because the two parties are so far apart, and/or because mediation isn't legally binding. Making it mandatory will not change any of those things.
12. Mandatory mediation won't improve initial decision-making that leads to a dispute in the first place. If you demand an LA mediates, where is the incentive to improve decision-making? It simply kicks the can down the road, knowing they'll get another chance and in the meantime, they are not spending money on potentially expensive provision.
13. We would suggest the DfE commissions some urgent research to discover why some mediations go well and why others don't and why LAs unlawfully refuse to mediate and why parents sometimes decline mediation. Then you may be in a better position to make further decisions, and perhaps issue guidance and case studies on successful mediation on this.
14. The Green Paper states that mediation "*helps to maintain and improve relationships...which is important for long-term collaborative working and supports better outcomes for children and young people*". You simply have no evidence to support this.

15. To avoid the need for mediation you need better decision-making which means ensuring the right people are on the panel and that they have the right, current, information. Too often decisions to refuse to assess, or to make an EHCP, are overturned because of this. In effect, the LA has taken an indefensible position. This shows that better administration skills are needed, and a more thorough initial assessment that includes the young person and the parents being supported to tell their story – once again, an Independent Supporter would be a good move to ensure a smooth process with the right evidence.
 16. You also need to ensure that where the parties do consent to mediation, that the mediator understands the issues at hand, and can create a solution that improves outcomes for the child.
 17. Mandatory mediation was first floated in the 2014 reforms, but opposition forced the idea to be dropped. What, if anything, has changed?
 18. If mediation was mandatory, how would it work for families who want to appeal health and social care aspects as well as education? These families can now do this under extended powers given to the SEND Tribunal. These powers, tested under the National Trial, will continue but they should be binding.
 19. The power imbalance between families and local authorities is significant, meaning that it is unlikely to be a conversation between equals. In addition, if parents are not fully informed about their child's rights, they may concede more than they should, resulting in their child's needs remaining unmet.
 20. Making mediation mandatory will have significant cost implications – who will fund this? The LA? Where will that money come from?
 21. Mediation often ends in compromise. However, parents mainly dispute an LA decision because that decision is unlawful. Why should they be forced to compromise when their child is the victim of law-breaking and the situation could be fully resolved in their favour at the SEND Tribunal? Parents deserve a timely resolution to unlawfulness and building mediation into the system inherently builds in delay to lawful redress
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Responses from parents/SNJ readers

NB: These views are those of parents for whom we have acted as a conduit for their response to the Green Paper. The views expressed from here are not necessarily those held by Special Needs Jungle.



1. I strongly disagree. Mandatory mediation is not a good idea because our children's needs are not something to be negotiated. Needs need to be met as the current law states. Mandatory mediation will slow everything down and the system is already too slow. It will also make it all more expensive as advisors during the mediation process will cost money.
2. The concept of reasonable adjustments to ensure disabled children are not discriminated against is a good one. The SEND Tribunal is a good way of establishing if a child has been discriminated against and to make binding orders in a disability discrimination claim. The SEND Tribunal has no power to award financial compensation but can ask for a child to be reinstated at a school they have been excluded from.
3. I don't know whether it is a good thing or not to add financial compensation to this as it's not my area of experience.



1. Mandatory mediation is a terrible idea which will make it harder and slower for children to get redress and to get the right support.
2. SEND disputes are not about failure to meet agreement or to reach reasonable compromises. They are about lawful and unlawful decisions. Mediation might make sense in a commercial or family law context, but it's fundamentally wrong that LAs should be allowed to mediate their way out of their own breaches of duty, and that parents should be encouraged to compromise on their legal rights and "settle" for less support than the child actually needs.
3. On school placement especially, there's no middle ground for a mediated compromise - the child can only go to one school, so one side or the other would have to give up everything.

4. Often the parties will have been discussing these issues for a long time already - mediation just forces them to continue a profitless conversation for longer.
5. Requiring a disabled young person to go to mediation, even with support, is immoral – the power balance is unacceptable.
6. I disagree with the proposal to return disputes to “independent multi-disciplinary panels” if mediation is unsuccessful. As described, they are not “independent” at all – just more LA appointees. Another roadblock and more delay.



1. Mandatory mediation is not a good idea. It is unlikely to get results and is actually an inappropriate concept as needs are not negotiable; the provision to meet the needs should not be compromised at all. It would equally not make it quicker for children to get the support they are entitled to, in fact it could make the wait longer as it will likely draw out the inevitable.
2. Mandatory mediation was opposed in the 2014 reforms and nothing has changed ideologically.
3. We already have forms of mandatory mediation as parents are required to consider if it would be useful and obtain a mediation certificate if not. Beyond this, parents should be allowed the choice.
4. It would slow down access to redress and support by forcing parents to go through a possibly fruitless mediation process before they can appeal, with the latter often being successful for the appellants. This shows where the changes need to be made and it's not the parent's role.
5. If mandatory mediation does go ahead, parents should be allowed to register an appeal anyway so they don't lose time, but I still strongly oppose it.
6. The Green Paper states that ‘national standards’ will set clear expectations about the timescale for mediation to take place and that LA attendees must be decision-makers. This is already set out in the 2014 regulation but doesn't happen. Why would this change to mandatory mediation make it any better applied or utilised?

7. It is unclear what evidence or research the DfE has used as the basis for arguing for more compulsion. The law simply needs to be implemented. Accountability when not. Problem solved!
8. Meaningful decision-making processes by ensuring SEND decision panels have accurate and up-to-date information including personal 'testimony' from the child and their family should be a priority.
9. It may well be that requiring LAs to mediate proves to be a disincentive to improve initial decision-making and communication with families; they will hold out for this.
10. The Green Paper suggests if mandatory mediation 'does not prove effective in strengthening earlier redress', a possible additional stage, called 'independent review', would be introduced as another mandatory step before an appeal can be lodged. The true independence of this panel is a concern and has likely already convened and made the decision that needs appealing in the first place. It would be a long time before redress to happen for disabled children with these added steps.
11. Who will fund all these additional steps and for training more mediators?
12. Is it the wrong question - should the DfE be trying instead to cut disputes by encouraging lawful decision-making by LAs?!!!
13. Forcing mediation for vulnerable parents who may not understand the system, especially considering the power imbalance between parents and local authorities is also inappropriate and counterproductive.
14. Some families will still be unable to pursue mediation or an appeal, for many reasons.
15. Mediation could be more than a settlement mechanism, it could be valued as a collaborative process of change if approached collaboratively.
16. Equally, the system where mediation, the LGSCO and the Tribunal work in collaboration, as complementary accountability processes that offer the best chance of holistic and sustainable oversight of SEND decision-making would be amazing and so much more effective.
17. It is unclear how if mediation was mandatory, how it works for families who want to appeal health and social care aspects as well as education? These families can now do this under extended powers given to the SEND Tribunal. These powers, tested under the National Trial, could in fact be an order rather than just recommended.



1. Mandatory mediation will even further slow down what is already a long and drawn-out process. If supports were in place in schools (through the school culture or accessible curriculum) mediation should not be required. If parents are fighting against decisions, other agencies (such as the local IAS) will already be involved. Why drag it out even more for the child, young person and family to struggle further?
2. If lawful decisions were made in the first place (there are many examples where this is not happening), less mediation would be required.
3. If school was fully inclusive through its culture and curriculum, less mediation would be required.



1. Strongly disagree. Rather than forcing parents to enter mediation, the government should ensure that LAs comply with the law, thus reducing the number of appeals to the SEND Tribunal, with punitive consequences for a failure to do so. This would see a significant drop in the number of appeals. By requiring mediation, there is a risk that families remain in limbo for very lengthy periods, as there is no statutory timeframe for mediation to take place and for LAs to engage. This proposal will just prolong the process for most families because it will continue to be used by LAs as a delaying tactic ahead of a tribunal.
2. This frustrates the right of parents/carers to obtain a suitable education for their child/ren by slowing everything down. There is a perverse incentive for LAs to avoid meeting their statutory requirements in order to move to mediation and then tribunal, as it saves them money in the short to medium term.
3. What evidence is there that compulsory mediation will reduce the number of tribunals? What evidence is there that mediation achieves a satisfactory outcome for children and young people and their adults?
4. Many parents/carers of SEN children and young people are so tired and tied up trying to support them that they lack the time, energy and knowledge to enter into a mediation or legal challenge. Putting an extra step, in the form of mediation, is likely to put more parents off, and is therefore not in the best interests of the child. This is particularly the case where the adults have disabilities/diagnoses of their own. It is already

off-putting enough for families to negotiate the legal processes without making this even more difficult, and the most disadvantaged will suffer the most here. This will reinforce the cycle of disadvantage being faced by SEN children and young people, which will in turn place more burdens on the state as they move into adulthood, in terms of mental health support, living support and physical health support. Children's mental health is already in crisis, these proposals won't alleviate this in any way.

5. How long would children have to wait for an "independent Review" panel to intervene should mediation fail?
6. How will all this additional work and extra steps be funded? LAs are already on their knees financially, as well as being unable to recruit and retain staff, particularly in challenging roles like these where they are dealing with unhappy and desperate families on a daily basis.
7. The First Tier SEND tribunal should be able to award financial compensation to a child and their family who have been discriminated against. This is because children often suffer lifelong trauma as a result of discrimination, but waiting lists for mental health support and counselling are years long. Compensation would fund private support quickly to prevent further deterioration in mental health and lifelong damage. Apart from reinstatement of a child's school place and an apology in the case of discrimination school staff should be required to complete mandatory training and schools should be monitored on this and discrimination cases by OFSTED. The child should also be fast-tracked to a suitable alternative setting or provision, including EOTAS where this is preferred or the relationship with the school has irrevocably broken down.



1. The current system services children and families well, evidenced through the VERY significant number of cases at tribunal and at the LGO that are found in families' favour. What is missing though is compensation for trauma caused. The issues leading to the need for redress is that local authorities are unable to understand and apply very, very clearly laid out laws and, because of this incompetency, are making decisions and applying practice early on that inevitably means EHC assessments and any resulting plans are carried out badly and change nothing for the child. Where is the accountability for this? There is none.

There are no robust consequences for local authorities who repeatedly fail and fail and fail. This is evident at officer level where performance management is not weeding out incompetence, all the way through to senior leaders and executives and also council portfolio holders. They can all get away with it and just end up with a bit of a fine, or a bit of media embarrassment. When my child succeeds in killing himself due to local authority incompetence, no one will be held accountable when it is entirely preventable if everyone is able to do their jobs properly. But, when he does die, no one at the local authority will be held responsible for failing him. They get to go home to their families and children, draw their pensions, and believe themselves quite entitled to forget about it...because the whole system empowers and protects them to do so.

2. Compulsory mediation is pointless. You cannot argue with stupid. I have lost count of the number of times I have had to teach SEND officers about the law, and about my child's needs - and I speak as both a parent and a highly skilled and knowledgeable SEND practitioner in my own right - and they DO NOT GET IT. After a while, there is no point trying to argue anymore or in seeking conciliation or compromise. Unless SEND Officers are extensively trained, this will not work...and you are ensuring that through the silly idea of standardising EHCPs.
3. Compensation should be available. I have lost a huge amount of income from having to look after my son for over a year when he was not able to access school as a result of unmet SEND needs and proven abuse from his teacher. We still, even though he now has an EHCP, cannot access specialist trauma support for him through our local CAMHS. Compensation would enable us to buy these services for our child. They are not a luxury, lucky windfall - compensation can backfill for families who have suffered debt as a result of lost earnings, and they can also open gateways to private services. Even if the compensation can only be released if families submit receipts for therapies, this is still so very, very worth it. Sadly, compensation then doesn't end up being a redress for harm caused, it still ends up being swallowed up in trying to get the help and support our children need and that our local areas are still unable and unwilling to provide for them.



1. Why is this so high in 2022 with very clear expectations and legislation. It is not OK.

2. It is not OK to traumatise a child out of education.
3. ANY professional that has caused a child trauma and pushed them out of education should be barred from working with ANY child ever again.
4. It is not so simple to just put a scarred child 'back on track' and only those who have had to go through putting their child back on track would know how infuriating this comment is after many years of pleading with schools and LAs to help their child and of course the ordeal of doing that whilst fighting every barrier the LAs put in.



1. I strongly disagree. The proposal totally misses the point about the reasons there are so many current disputes to resolve in courts between parents and local authorities. The vast majority of parents have worked with teachers, SENDCos and school leaders as well as Local Authority parent services for many months if not years before they take the decision to go to tribunal. Making the process of mediation mandatory will not resolve anything but will further postpone decisions about necessary support for children with SEND and further disadvantage their learning. In any other circumstances, I would highly support the principle of mediating between disagreeing parties but the fact that it is seen to be so necessary is a strong indication that parents and LAs inhabit different sides of the inclusion argument. Parents who see others as genuinely and effectively working for the effective provision of support for their children will not want to interfere with that process. They almost always do so out of sheer exasperation after trying every other possible option to get the support their child needs. Introducing mandatory mediation is an insult to the goodwill and intelligence of most parents and a sad reflection on the capacity of ministers to understand where the real problems lie.
2. Schools, local authorities, and especially Multi-Academy Trust leaders, should be rigorously held accountable for implementing appropriate support for children and young people with SEND and for the funds they have been granted to make that provision.



1. The point in the Consultation about setting standards for how complaints are dealt with and who is responsible for resolving concerns is of fundamental importance but is embarrassing for want of specificity. It is deeply concerning that even in the face of demonstrable breaches of the Children and Families Act and the SEND Code of Practice, Local Authorities for example have not been sanctioned. It is therefore of paramount importance that any new framework is clear on what the consequences of such breaches will be, which I would suggest include sanctions at both the individual level (where specific individuals are found to be repeatedly in breach of the requirements) and at the entity (e.g. Local Authority, or School) level where there are systemic issues therein.
2. The proposals around mediation need far greater clarity in respect of how young people and families will be supported during such interactions. At present, there is an 'unfair fight' between Local Authorities, whose representatives are well versed in the regulatory requirements, familiar with the process, and thereby well placed to 'game' the system to their own advantage, and those young people and families who are often ignorant of those matters and who are therefore vulnerable and at risk of being manoeuvred, manipulated or pressured into an inappropriate and unsuitable outcome. As such, where mediation is mandatory, so too should be the offer of independent support for those families.



1. I strongly disagree with mandatory mediation.
2. It will only buy more time for LAs to delay intervention. (From personal experience)
3. The DfE should be trying to cut disputes by encouraging lawful decision-making by LAs.



1. I strongly disagree. My understanding is that mediation rarely works and only serves (in the vast majority of cases) to delay children securing the provision to which they were always entitled. Every day of lost provision comes at immense cost to their education. The idea of an 'independent review mechanism' might have merit, but needs fleshing out as it not clear how the system would work e.g. how independence could be ensured, who will fund that system, how to ensure equal 'power' between LAs and parents, how long the process should take, etc.



1. Strongly disagree with making mediation mandatory.
2. Mandatory mediation will only delay the process of obtaining the correct support for the child.
3. Within the mediation process, you will have parents who are unaware of the support available to them and the rights of them and their child against local authorities who know the law and options available but will pick and promote the options most suitable for the LA, not the child/parents. Mainly the cheapest solution.
4. Children/ parents unable to pursue mediation appeal because of lack of funds/ knowledge will be left with insufficient support to meet their SEND needs.



1. Our parental experience of mediation is that the result was just increasing the amount of time that it took to provide support and result in tribunal anyway. Parents should be allowed the choice and it should NOT be mandatory. The Green paper seems to be making a system more complicated to navigate than it already is. Parents need a simple, effective, timely process. Surely introducing more layers of red tape to the system will mean the diversion of valuable funds away from the money needed to support the child. Lawful decision-making by the councils should be encouraged. How does mediation help disputes with health and social care? If councils had consequences for non-compliance with law, then surely this would be a better way to reduce expensive tribunals rather than the current proposals.