



**A REFLECTIVE ANALYSIS OF SENAC'S TRIBUNAL
SUPPORT AND REPRESENTATION SERVICE AND
PARENTAL EXPERIENCES OF APPEALING TO
SENDIST**

November 2021

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EXECUTIVE SUMMARY

The Special Educational Needs Advice Centre (SENAC) is a regional charity set up in 2003 to provide independent advice and advocacy, on the application of the statutory Special Educational Needs (SEN) system.

In 2017, in response to the needs of our service users, SENAC secured funding from the Esmée Fairbairn Foundation to support the Charity's development and delivery of a Tribunal Support and Representation Service for parents appealing Education Authority (EA) SEN decisions to the Special Educational Needs and Disability Tribunal (SENDIST). SEN appeals to SENDIST have increased and the challenges of identifying and providing for the diversity of SEN within education continue to prevail. Against this backdrop, SENAC have reflected on the experiences of parents and those accessing and delivering our Appeal Service, to assist and inform the ongoing EA and DE reform of the SEN processes.

The focus of this research has been specifically on the Appeals process. Our findings and analysis are based on the following: SENAC's appeal case records (315), testimonials from parents who received SENAC support, an Online Survey of parental views (July/August/September 2021) (164 respondents), consultation with SENAC Appeals & Advocacy Team (2) and with legal practitioners (2).

The majority view of parents on the overall appeals process was that it was legalistic, confusing, and stressful. A number of parents indicated they felt unable to appeal as they were exhausted by the efforts already undertaken to secure SEN provision for their child. Further anxiety of appealing and potentially attending a Hearing was too challenging and they opted not to appeal. The practitioner view was more positive - an appeal was recognised as a key remedy within the SEN Framework to challenge SEN decisions. Practitioners, however, acknowledged the stress and pressure on parents to appeal and, the importance of the availability of free support and representation to encourage and enable the parental ability to appeal.

A number of common concerns were raised in relation to the overall Appeals process. Parents felt they were not listened to and had limited opportunity to put across their views prior to and after an appeal is lodged. Information received from the Education Authority (EA) was unclear and full of jargon and regarded as misleading and inconsistent. Difficulties in contacting and communicating with EA SEN Officers was a concern expressed by parents and practitioners, compromising the ability to discuss issues or receive updates. Such difficulties mean missed opportunities to progress a case more promptly or even prevent the need for appeal. The need for improved collaboration and support between schools, Health Professionals, the EA, and parents was identified as an important requirement at each stage of the process.

The two most common reasons for an appeal were examined in more depth, i.e., the right to appeal a refusal to carry out a Statutory Assessment and appeals relating to the Final Statement of SEN:

Refusal to Assess: The main issue and concern expressed in relation to the EA's refusal to statutory assess was, the incidence of EA decisions not to Assess reversed on lodgement of the appeal. 68% of 122 appeals supported by SENAC on refusal to assess were conceded by the EA after an appeal was lodged. Significant in this practice was that, in most cases, the Reasons for Appeal contained the same evidence and facts already submitted to the EA. This suggested it was the act of lodging the appeal that was the catalyst for action and caused the EA to reassess their decision. This raised concern in relation to the EA Statutory Assessment Panel's initial consideration of the facts and information submitted, and the criteria used to determine if the legal threshold of 'necessity' to Assess had been evidenced. In cases where no new evidence was submitted on appeal and the EA had not contested the appeal after lodgement and, subsequently, initiated the Assessment, this action confirmed the evidence previously considered by the Panel had been sufficient to meet the threshold for Assessment. This caused frustration for parents, unable to access satisfactory explanation from the EA why evidence already submitted and considered, had triggered a different outcome weeks later, on lodging the appeal and the stress and delay this had caused. This lack of information and transparency in relation to the decision-making of EA Panels, to whom parents have no access, was highlighted as a main factor, in the lack of parental confidence in the equity of the SEN processes.

Inconsistent application of the SEN Code of Practice in determining if the child's needs are being appropriately met in school, was identified as creating inequity in determining the need for Assessment. For example, reference by the EA to the absence of input from external specialists or Educational Psychology, as a reason for refusal, was perceived as unfair, as it was because of EA policy, imposing restrictions on numbers of EP referrals from schools and limited capacity to services, which meant the child could not meet this criterion.

The Final Statement of SEN: A number of issues were raised about the inadequacy of Final Statements, the most common concern being that, despite the legislative requirement to specify SEN provision and draft clear and unambiguous content, provision is routinely neither specified nor quantified. Appeals relating to SEN provision were the most common reason for the appeals on Statements in SENAC cases and similarly in the Online Survey. The lack of inclusion of all needs within Part 2 of the Statement was also a concern, as Part 2 is directly linked to provision in Part 3. Such inadequacies within the Statement often led to redrafting of content thereby causing unnecessary delay in finalising the Statement and progressing an appeal, and delay for the child receiving support in school.

The use of Working Documents as a tool for redrafting Statements following lodgement of the appeal, was viewed positively by practitioners as a useful strategy to avoid a Hearing and improve the Statement. However, the main weakness identified with 'working documents' was the potential for further delay, highlighting the need for the process to be timebound.

There was concern expressed in relation to difficulties and delay in the finalising of Statements and the implementation of SEN provision in schools, secured following a Tribunal ruling. The lack of accountability or sanction on, failure to implement the SEN

provision in schools, was concerning. Such delays and failures eroded the strength of the appeal right and compromised the impact of, and adherence to a Tribunal ruling.

Dissatisfaction was expressed about the EA's practice of making only minor adjustments to Statements at Hearings on the rationale that the Annual Review will be the mechanism for further adjustment, yet no guarantee is given that they will agree to make any required amendments following the Annual Review. It was concluded that, despite the imminent introduction of a new right of appeal for parents to challenge an EA decision not to amend a Statement following an Annual Review, this should not compromise the duty to specify the appropriate SEN provision required at the time of Statement issue. Again, this strategy created potential for delay, compromised the impact of the Statement, and eroded the strength of this appeal right.

The Hearing: Examination of the experience of parents at the Tribunal Hearing indicated the majority considered the Hearing to be a fair and equitable, independent forum. However, the anticipation of, and attendance at, the Hearing, was described as stressful and intimidating, particularly for parents attending without representation, who must counter the legal and tribunal experience of the EA team. However, the efforts of the Tribunal Chairs, to ensure equity for participants and, foster an environment to aid constructive round table discussion, was noted. Despite the Tribunal Panel members' recognition and awareness of the pressure and stress parents may feel and, their efforts to address this, practitioners believed parents attending without representation were disadvantaged. Identifying and addressing possible inequity for appellants at a Hearing, was viewed as a priority, particularly with the imminent introduction of appeal rights for young people over compulsory school age within the new SEND Act 2016.

The research indicated certain cases appear to be more likely to proceed to Hearing. Cases in relation to Final Statement provision and the school named in the Statement, were more likely to be contested at Hearing, particularly if a special school was the parent's preference. As these appeals may involve a number of issues, it was concluded it may be more challenging for the EA to resolve these appeals prior to Hearing. The limited capacity of specialist settings and special schools was also referenced as a factor in the need for a Hearing.

Other issues raised in relation to the Hearing included: parents may have no idea who will be in attendance in advance of the Hearing; the late notice from EA of their intent to concede; concerns relating to adjournment requests and the lack of opportunity for parents to discuss their case prior to Hearing.

Impact of Appeals Support: It is clear parents require independent support to exercise their right of appeal and access to representation at Hearings. 98% of respondents to the Online Survey believed it was either 'extremely important' or 'very important' for parents to have support and advice to appeal. SENAC's appeal service users also positively testified to the difference having support and representation made to their ability and confidence to appeal. The additional insight and knowledge of the SEN statutory processes specialist practitioners have, was identified as a benefit of accessing independent support. Having advice and representation can mean the

difference between a parent deciding to appeal or not appealing. Parents described being 'worn out' by the long 'fight' they have had to reach the point of appeal.

Positive outcomes from appeal mean significant changes for children in school. The outcomes for children and young people can be significant. A successful appeal will secure the assessment and SEN provision that children had been unable to access prior to an appeal, securing a range of additional and specialist resources and interventions and/or an appropriate school placement. Children out of school can return to school and realise their right to education. An appeal offers children the opportunity to learn and progress and mitigate the educational disadvantage and inequity many currently experience.

SEN Reform and Improvement

SENAC welcomes the commitment of the Education Authority and Department of Education to improve the delivery of the SEN system and their recent initiatives, strategies and reviews undertaken to progress positive change. We also welcome their collaboration with the Department of Health and engagement with children and young people, parents, schools, organisations, and other stakeholders. SENAC will continue to engage positively with the EA and other stakeholders to support improvement in the SEN processes.

It is hoped this reflection and comment on the Appeals process will provide additional insight and information on the issues and concerns expressed and experienced by parents and practitioners, to inform the ongoing reforms.

Summary of Recommendations and Key Points for Consideration:

- Communication between parents and the EA needs to be reviewed with a view to providing clear and consistent guidance and direction and implement strategies to promote 'parent partnership' and reduce the 'combative' experience parents describe.
- There should be improved accessibility and capacity of EA Officers to communicate and engage with parents and representatives supporting parents, prior to, and after, an appeal is lodged.
- There is a need for improved collaboration between parents, schools, health professionals and the EA.
- Consideration should be given to enhancing the availability of free appeals advice and representation and providing legal aid for representation at Hearings.

Refusal to Statutory Assess

- Greater transparency is required on the decision making and consideration of evidence by the Statutory Assessment Panel with improved sharing of information to parents on decisions.

- Clear, updated guidance should be provided on the criteria applied by the EA to demonstrate the evaluation and application of the evidence in relation to the threshold for Assessment.
- There should be greater communication between schools and the EA where a decision not to Assess has stated the needs of the child can be met from within school resources.
- Access to the Educational Psychology Service should be made available to assist the EA in determining necessity to assess, in cases where a child has been identified as requiring EP input but restrictions on the number of school referrals has prevented this intervention.
- Priority should be given to reviewing and increasing the capacity of, and access to the external specialists within EA's Pupil Support Services to enable greater equity and evidence to inform the EA's decision on the necessity for statutory assessment.

The Final Statement

- The practice of issuing Statements of SEN which are unspecified and unquantified must cease.
- There should be a mechanism in place for SENDIST to monitor and address any failure to implement the SEN provision in schools, which has been secured as a result of a Tribunal ruling.
- There should be a statutory timeframe in place for completion of a Working Document to ensure that the process of negotiation and implementation is time limited.

The Hearing

- A Witness List should be provided for all parties, prior to a Hearing, as standard practice.
- A more equitable approach should be adopted to requests for adjournment, extension to timeframes etc.
- Consideration should be given to the extension of Legal Aid to include representation at Hearing.

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1.0 INTRODUCTION

1.1 Introduction

This Chapter describes the mission and activities of the Special Educational Advice Centre (SENAC). It outlines the purpose of the report and traces the evolution of the SENAC's Tribunal Support and Representation Service.

1.2 About SENAC

The Special Educational Needs Advice Centre (SENAC) is a regional charity, set up in 2003, by parents of children with disabilities and special needs, to provide independent advice and advocacy, on the application of the statutory Special Educational Needs (SEN) system. The necessity to access independent advice was motivated by two main factors:

- The lack of appropriate SEN provision in education to meet children's needs and,
- The struggles of parents to understand the complexities of the SEN system, hindering their effective engagement with the SEN decision-making processes.

As an independent charity, SENAC's primary aim is to advance the education of children and young people through the application of the SEN system, safeguarding and progressing the rights of children, and parents, as set out in this legal system.

SENAC supports and advises over 1000 families per year, and receives referrals from over 100 organisations and professionals, throughout Northern Ireland. Our services have developed, over almost two decades, to respond to the needs of those we support. SENAC has built collaborative and positive relationships with other organisations and agencies, enabling us to reach families throughout Northern Ireland in need of SEN advice and support. Our service delivery provides us with the opportunity to engage with a broad range of stakeholders and families.

1.2.1 SENAC's Services

- A Confidential Telephone Advice-line providing immediate advice and information on all aspects of special educational needs.
- An Education Advocacy service engaging with families, schools, and the Education Authority to advocate directly for the child's educational needs to secure appropriate SEN provision.
- A Community Support and Information Service providing information and resources to community groups and other organizations on special educational needs and, delivering community-based SEN workshops for parents on, understanding and engaging with the SEN decision-making processes.

- A Tribunal Support and Representation Service providing advice, guidance, and representation at SENDIST Hearings for those appealing Education Authority decisions on SEN, where an appeal right exists.
- SENAC also advocates on a broader policy basis for improved education provision. The experiences of our services and service users provide the evidence base to inform policy work and thereby impact on the wider SEN population in Northern Ireland.

Almost 20 years on from SENAC's inception, the need for independent advice to progress the educational opportunities and rights of the children, is greater than ever. Despite the ongoing reform of SEN, and the efforts of schools and the Education Authority, issues, and barriers, to learning and inclusion, for children with disabilities and special educational needs, prevails.

To reduce the educational disadvantage, exclusionary practices and inequity which exist for many of the most vulnerable children in our communities, the effort to reform and improve SEN provision, and the statutory processes underpinning educational practice and policy, must continue. This Report focuses specifically on the potential for improvement in relation to one aspect of the statutory SEN System namely, the appeal process.

1.3 Appeal Rights to SENDIST

Where parents cannot reach agreement with the Education Authority (EA), they have the right to appeal the decisions of the EA about their children, to the Special Educational Needs and Disability Tribunal (SENDIST). SENDIST is an independent body and appeals are heard by a Panel of three. The Chair is a lawyer, and the other two members are required to have experience of SEN. The grounds for appeal are:

- A parent or school have requested the EA to carry out a Statutory Assessment or re-assessment of SEN and it refuses to do so, or the EA carries out an Assessment but decides not to issue a Statement of SEN.
- The EA issues a Statement of SEN or makes changes to an existing Statement of SEN and the parent disagrees with the description of needs, SEN provision and/or the school named on the Statement.
- The EA ceases to maintain a Statement of SEN or decides not to amend a Statement of SEN after carrying out a re-assessment of need.
- In certain circumstances, when the EA refuses a request to have the child placed in a different school.

Crucially, there is a time limit for appeal. Parents must appeal within two months of receipt of the EA's decision.

1.4 The Purpose of Report

The purpose of this report is threefold:

1. To inform the ongoing review and reform of statutory SEN processes by highlighting the issues and practices impacting on appeals, based on the evidence and insight, provided by our parents and practitioners.
2. To provide an opportunity to strengthen parents' voices and, share their experience of appeals, in recognition that, this is an essential part of improving the chance for each child, at the heart of every appeal, to receive meaningful and effective SEN provision.
3. To offer recommendations to improve the implementation of the appeal process and, the parental experience of appealing, in acknowledgement that, SENDIST appeals are a key mechanism to securing assessment and educational support.

1.5 SENAC's Tribunal Support and Representation Service

SENAC's Tribunal Support and Representation Service was set up in 2017, supported and funded by the Esmée Fairbairn Foundation to provide independent advice, advocacy, and representation for those appealing to SENDIST. Since 2017, the service has supported 315 SEN Appeals, with almost 100% resulting in a successful outcome.

The need to offer this service to parents became increasingly evident in the years prior to 2017. There were several factors that required SENAC, as an organisation, to review its service delivery and, be responsive to the needs of those we support.

1.5.1 Increased Demand for Support

There was an increase in the number of parents requesting support and advice to appeal to SENDIST. As an organisation with many years' experience advising on the SEN Framework, SENAC was acutely aware of the barriers to learning and inclusion for children with SEN existing in education and the growing pressures on schools to adequately meet the diversity of need. The statutory SEN Framework, which should provide the means to identify and make provision for individual needs, was increasingly compromised by resource pressures and inconsistencies in its application. Schools were having to choose between children who would receive SEN assessment and provision. Inevitably, the dissatisfaction and concerns of parents, in relation to the lack of response and action to provide for their child's needs and, the resulting impact on their child, brought about the increased need for SEN appeals and parents seeking support for this process.

1.5.2 Parental Anxiety associated with the Appeal Process

Parents expressed concern in relation to the pressure and anxiety they experienced taking an appeal. Most concerning for SENAC, were the incidences of parents who felt unable to appeal due to the exhaustion they were experiencing from the long process to secure provision they had already engaged in. Taking an appeal was beyond their capacity. Lack of confidence, the complexity and legalistic nature of the process and fear of attending a Hearing were all obstacles to parents appealing. This meant that their child was being denied the opportunity to receive the SEN support required and the detrimental impact this may have on their education. As a charity supporting children with SEN, through informing and empowering their parents, the provision of an appeal service, to enable parents to exercise their right to appeal, was a gap in our service provision which needed to be addressed.

1.5.3 Limited Support Available Elsewhere

Demand for support to take an appeal was also increasing for those organisations within the community and voluntary sector who offered this service. Prior to offering an appeal service, SENAC referred parents to other organisations. However, it was becoming a challenge for parents to access free advice and, particularly, representation at a Hearing, increasing the necessity for SENAC to maintain a seamless support for parents throughout the whole statutory process i.e. from lodgement of an appeal, through to representation at Hearing, if required. Raising the community and voluntary sector's capacity to support parents and children, in this way, remains a relevant need.

1.5.4 The Introduction of EA Panels

It became evident from SENAC's case work and engagement with parents and the Education Authority that, the potential to resolve SEN provision inadequacies and concerns, through advocacy, without the need to take an appeal, was not as effective as it had been in previous years. For example, meeting with EA Officers, as part of a parent's opportunity to make representations on draft Statements, was impacted by the introduction of EA Panels to make decisions on SEN provision. Parents felt this compromised and diluted their opportunity to have constructive discussion with SEN EA Officers and impact directly on decision-making as often, no decision could be reached prior to the issues going to an EA panel. Significantly, the parent had no direct access to the panel and no information was available on the Panel, neither in relation to its decision-making processes nor, in relation to the criteria on which it based its decisions. Such lack of transparency only fuelled parental lack of trust in the process and, increased the necessity to have the evidence independently considered through an Appeal. Additionally, the lack of availability of EA Officers was compromising communication and contact with parents.

1.5.5 Ongoing Need for Support & Representation

Since SENAC's Tribunal Support and Representation Service began in 2017, these factors determining the need for our service continue to be relevant. In many respects, they are more relevant than ever, given the increasing sense of isolation and exclusion experienced by parents of children with SEN, during the recent Covid-19 pandemic. It is positive, however, that there has been more recognition of the many issues and concerns in relation to meeting special educational needs, following the publication of key reports.¹ These reports have collectively highlighted the concerns expressed for many years by families and organisations. They also demonstrate that the upward trend of SENDIST appeals continues, increasing the need to address the lack of opportunity for parents to be supported in exercising their right of appeal. Significantly, if parents have the support to appeal, this will mitigate the disadvantage for children which inevitably occurs when the parent is unable to progress their child's educational needs through an appeal.

1.6 SEN Reform and Improvement

SENAC welcomes the Department of Education and the EA's intent and the positive action already undertaken to reform and improve the delivery of the statutory SEN system and address concerns and issues raised. We also welcome their collaboration with the Department of Health and engagement with other agencies, organisations, and stakeholders. The challenges ahead are significant but the commitment to bring positive changes for children's learning and inclusion is evident in the efforts and plans for review and reform. SENAC will continue to engage positively with the EA and other stakeholders to support improvement in the SEN processes.

¹ Northern Ireland Audit Office Report SEN 2017 and 2020
'Too Little Too Late' NI Commissioner for Children and Young People 2020

2.0 METHODOLOGY

2.1 Introduction

This Chapter sets out the methodology employed to gather the information. The findings presented in the following Chapters are based on five main sources of information:

- SENAC's Internal database and appeal cases review
- Testimonials provided by parents who received support from SEN
- SENAC's Online Parent Survey
- Consultation with SENAC Appeals and Advocacy team
- Consultation with 2 legally qualified practitioners specialising in SEN, with specific expertise in appeals to SENDIST

2.2 SENAC's Internal Database

SENAC's internal database is an online bespoke tool used to record a number of key variables e.g. gender, age, EA region, disability, and referral source, to describe the recipients of advice/advocacy/appeals support, the nature and duration of the support received and, the outcome of that support. (Appendix 1) Baseline and post intervention comments are recorded to assist in describing the journey travelled by the child and family.

As highlighted in Section 1.5, SENAC successfully secured funding to establish its Tribunal Support and Representation service in 2017. The records for all appeal cases (315) from 2017 until August 2021 inclusive were analysed both quantitatively and qualitatively.

A number of case examples were identified for inclusion in this report to support the comment and analysis presented.

2.3 Parent Testimonials

SENAC's Tribunal Support & Representation Service regularly invites parents who have been supported, to provide feedback electronically, in the form of a testimonial. This provides very useful in-depth insight into the journey travelled by the family in their struggles to ensure that their child is appropriately assessed and, receive the necessary support required. It is particularly useful in highlighting the levels of despair and distress felt by both parents and children.

2.4 SENAC's Online Parent Survey

To further elicit the views of parents in relation to appealing the decisions of the EA, SENAC carried out an Online Survey (Appendix 2). We drafted a questionnaire using Microsoft Office Forms and distributed it on the 20/07/2021 to 215 parents who had

contacted us for appeals support during the four years of service delivery. It was also distributed to community organisation networks for onward circulation to service users and members. It was advertised on social media platforms Facebook and Twitter and on SENAC's Website.

A link to the Online Survey was also sent to the Locality Planning Groups (LPG) in the five Outcomes Groups - Belfast, South-Eastern, Southern, Northern and Western for distribution to LPG members and to Family Support Hubs. Outcomes Groups are responsible for the integrated planning and commissioning of services, at a geographic Health & Social Care Trust level, across Northern Ireland. Their membership includes representatives from the statutory, voluntary and community sectors and is therefore reflective of the Children & Young Peoples' Partnership.'

It is not therefore possible to calculate a response rate as we have no way of knowing the extent to which onward distribution took place. The Survey remained 'live' for 10 weeks. It was returned anonymously to ensure confidentiality. 164 responses were received. The quality and depth of feedback in responses was very high. Response rates to individual questions were also high. (Appendix 2)

2.5 SEN Specialist Appeals Practitioners

To gain insight into the views of those who advocate for and on behalf of children and young people, and represent them through the appeals process, consultations were carried out with (a) SENAC's Appeals and Advocacy Team and (b) two SEN specialist legal practitioners.

A schedule was drafted to facilitate a semi-structured interview which explored the whole SENDIST process, how the Hearing is conducted, communication and transparency, EA response re conceding/not conceding, parental/representative's experiences. Consultations were completed in August, September & October 2021 respectively. One consultation was completed face-to-face via zoom the other three were completed electronically, in accord with respondent preference.

Consultation focused on providing insight and analysis of appeals case work, exploring EA practice and decisions, and exploring implications for policy. Remedies for improvement of the SEN system, in relation to appeals were also sought.

2.6 Analysis

The information gathered from the above sources was analysed through statistical and content analyses. The focus of analysis was principally, to identify the current issues at an operational level, within the appeals process, which have implications at a more strategic and policy level. Analysis of the main findings enabled us to draw conclusions. These conclusions, in turn, informed the development of a set of areas for consideration which have been presented as Recommendations.

2.7 Report Writing & Dissemination of Findings

The information has been presented in a written report. (November 2021) and the Executive Summary has been circulated. Main Findings are based on the information taken from SENAC's internal appeal casework records (2017 to date) and the feedback parents supported by SENAC have provided; the information obtained through the Online Parent Survey (July/August 2021); and consultation with SENAC advocates and legal practitioners with specific experience of appeals to SENDIST (October 2021). All those consulted were assured that their views would be treated in confidence. Their experience has been reflected in terms of the overall appeal process. Conclusions have been drawn based on analysis of the information gathered. Recommendations and proposed solutions for improvement are based on the Conclusions.

To maximise the full impact of our findings we delivered a webinar (23/11/2021) Title: 'Appealing SEN Decisions 1. Share the Experiences of Parents & 2. Get Information on the Appeal Process.' Its aim was to inform and empower parents and provide learning and recommendations for addressing the current challenges within the appeal process. Contributions to the webinar were made by SENAC's Tribunal Officer, SENAC's Education & Policy Officer and a SENDIST Chairperson. It provided an opportunity to share the key findings from our research together with information and guidance for parents appealing SEN decisions.

3.0 MAIN FINDINGS – THE APPEAL PROCESS

3.1 Introduction

This Chapter presents the main findings of the research in terms of trends and key issues of concern in relation to the overall appeal process.

3.2 Experience of Appeal Process

The experience of parents of the Appeal Process in general, was more negative than positive. The most common descriptors used in the Online Survey were that the process is 'legalistic', 'confusing', and 'stressful'. (Table 2.10) This is similarly reflected in SENAC's internal appeal casework records. The worry and stress parents express about pursuing an appeal cannot be underestimated. Parental rights of appeal should be viewed as an opportunity to empower parents to progress their child's educational interests, rather than being viewed so negatively.

Practitioners' views on the appeal process were more positive. They considered it to be an effective mechanism to resolve issues. Given that practitioners are trained and experienced in the complexities of SEN and the appeal process, this positive view is to be expected. They did, however, recognise the process can be daunting and stressful for parents and acknowledged that many parents may be disadvantaged without advice and guidance.

There were several common areas of concerns and suggestions for improvement in relation to the overall appeal process identified from those consulted. These included:

3.2.1 Communication

- EA communications were described as '*jargon-filled*' and '*confusing.*' Parents expressed the need for clearer information to understand what is required throughout the process.
- Parents felt they were not listened to. Their opinions and concerns were neither respected nor acted upon. Rather than constructive discussion, their questions and views were dismissed. Some described a sense of being '*talked down to*' and a lack of empathy for their child's circumstances.

Example: 'The people who make these decisions never actually see the child, they are basing their decision making from reports and recommendations from professionals and parents and still fail to provide adequate support in school'

- Difficulties contacting EA Officers were reported by both parents and practitioners. Parents described waiting for long periods of time for replies, with calls and emails not returned and feeling '*passed from pillar to post,*' with no central point of contact for them. There was considerable frustration expressed particularly by parents having to '*chase up*' their EA Officer when the onus

should be on the EA, to keep parents informed. The need for increased availability of EA staff to respond to calls and enquiries and enable greater discussion with key SEN Officers was considered essential to improve the process.

- Parents felt the advice and information from EA personnel on key aspects of the process can be unsatisfactory and misleading. Examples provided included parents being told that SEN Statementing Officers are not required to speak to them, nor are they able to discuss decisions as all decisions are made by EA Panels. However, parents are not provided with a point of contact for a Panel member, nor do they have any access to the Panels.

The concerns and issues on communication expressed may be symptomatic of the pressures on EA Officers. If capacity building or training within the EA is required, then this should be appropriately addressed, to ensure parents receive information which is both timely and accurate. These experiences of poor communication with the EA only serve to erode parental confidence in the delivery of the SEN system, create further delay, and increase the likelihood of appeal.

3.2.2 Lack of Support & Collaboration

- Parents felt there should be more support and understanding from schools on the need for appeals. For example, some parents felt they were treated as *'troublesome'* parents, rather than a recognition that they are all working in the interests of the child and that a unified approach was needed.

Example: 'My child's primary school did not provide me with support through the statementing or appeals process. I was a young mother trying to manage the system on my own and when I asked my child's principal for support, she declined to support me. Instead of supporting us as a family my child was suspended for behaviour outside of my child's control.'

- Parents need to be able to input more positively to the process. They felt they could do this if they had more opportunity to meet with EA Officers and SEN Link Officers, rather than presenting a case, on paper only. There was also a perception that the role of EA SEN front-line Officers has eroded over time, and they are no longer the key support or source of information for parents they were in previous years.
- Greater collaboration and opportunity for discussion between school, parents, relevant health professionals and the EA, prior to and after an appeal has been lodged, was highlighted as a requirement for addressing issues which lead to appeals.

3.2.3 Meeting the Requirements of the Process

- Without advice and support, the challenge to draft the Notice of Appeal, Reasons for Appeal and Case Statement, is daunting for parents. Parents feel considerable pressure to ensure the content of these documents represents their child's needs and are afraid of omitting important information. Uncertainty on how the content for the Reasons for Appeal differs from the content for the Case Statement was expressed. It was acknowledged that SENDIST provide good guidance how to appeal and on Case Statement content but specific guidance on the difference of the requirements for content and evidence in each of these documents may be beneficial for parents.
- The length of time the process can take was a matter of some concern. An appeal will, most often, be lodged following a protracted period to attempt to secure the necessary assessment or provision for the child. This suggests the need to review current timelines with a view to identifying any scope to reduce the overall time to progress an appeal. Common reasons for delays experienced were adjournments of the Hearing, the EA requesting an extension of the Case Statement submission deadline and delays on the EA issuing a Final Statement following the Tribunal ruling.

3.2.4 A 'Combative' Process

- A common response and perception of the appeal process and the SEN system in general from parents is that they have to '*fight*' for their child. The perceived and experienced '*combative*' nature of progressing a child's needs through the SEN system generally, and appeals specifically, must be addressed through the continued review and improvement of the delivery of SEN processes and developing and enabling a more supportive and collaborative approach to the decision-making.

Example: 'To not have to choose between fighting the school, fighting the EA. The lack of support from both has been horrendous. My child has lost years of education. I have had to fight tooth and nail for everything. I have no confidence in the EA. They talk about early intervention but do not know how to provide this. Words aren't enough to explain the experience my child has had in education and no parent should have to send their child into school with the feeling of dread.'

4.0 MAIN FINDINGS – THE APPEAL RIGHT TO STATUTORY ASSESSMENT

4.1 Introduction

This Chapter presents the main findings of the research in terms of trends and key issues of concern in relation to the appeal right to request a Statutory Assessment.

4.2 Consideration and Use of Evidence Prior to an Appeal

It is evident from the information gathered, that there are concerns surrounding the consideration and application of evidence by the Education Authority (EA) in their decision-making prior to the parent lodging an appeal on a refusal to Assess. While the strength of an appeal as a remedy to challenge SEN decisions is the opportunity for all evidence to be independently scrutinized, this does not mean that parents should not expect the EA to thoroughly consider all evidence submitted to inform their decision-making. The high number of appeals which are not contested by the EA and conceded after an appeal is lodged, often based only on evidence already submitted prior to the appeal, raises concern regarding the basis on which the EA makes initial decisions in relation to requests for Statutory Assessment.

Of 122 appeals supported by SENAC in the last four years on the refusal to carry out a Statutory Assessment, 68% were conceded after the appeal was lodged and 30% after submission of the Case Statement. Only 2% went on to be contested at Hearing. (Table 1.7) Significantly, in most of the cases no new or additional evidence was submitted. These figures suggest that as a result of an appeal being lodged, the EA reversed their initial refusal and initiated the Statutory Assessment, with no further action or information required from the parent. This is concerning and raises questions about the means by which the EA's Statutory Assessment Panel initially identifies when the legal threshold of 'necessity'² for Assessment has been met from the facts and evidence submitted.

This practice is mirrored in the experiences recorded in SENAC's Online Survey of how an appeal was resolved, which shows 42 of the 110 respondents indicated the EA conceded on submission of the Reasons for Appeal. (Table 2.5) 58% of respondents confirmed no new evidence was submitted (Table 2.6).

4.3 Education Authority Panels

Parents and practitioners raised concerns in relation to how the criteria for determining when it is 'necessary' for the EA to undertake an Assessment is interpreted and applied by the EA Statutory Assessment Panels. The lack of clarity and transparency in relation to the decision-making of EA Panels and how the evidence presented to the

² Art 15 (2)(b) Education Order NI 1996

Panels is used to inform their decisions, has been a concern for many years. In cases where no new evidence was submitted and the EA have not contested an appeal after lodgement, and subsequently initiated the Assessment, this action confirms that the evidence previously considered by the Panel had been sufficient to meet the threshold for Assessment.

Of particular concern, are cases where, despite strong supporting evidence from schools and professionals relating to children whose needs are complex, or are out of school or, a relevant professional has recommended an assessment, the decision is still a refusal to assess. In such cases the dismay and surprise at the refusal often expressed by parents, professionals and, schools involved with the child, are further indicators that the initial evidence may have been sufficient to meet the criteria for Assessment.

In some cases, the EA will offer to send the case back to the EA Panel for further consideration. While this may appear positive, and well intentioned, it can create further delay, as there may be no indication given when the Panel meeting is scheduled and no guarantee of a different outcome. The child may still be refused Statutory Assessment and crucially, the parent may be out of time to appeal. SENAC have supported appeals where the case had previously gone back to Panel and was refused a second time, adding weeks to the process. Unless new evidence becomes available for the Panel to consider, an offer to return a case to the Panel, again suggests doubt on the initial consideration not to assess. This can create uncertainty for parents as to how there might be a different outcome. It is not an alternative to lodging an appeal.

Failure to make the decision, during the consideration phase of the process, must be addressed by the EA to ensure unnecessary delay no longer features as a systematic approach to Statutory Assessment.

It is therefore positive that the EA have accepted recommendations from recent reports to provide greater transparency on all the Panels involved in SEN decision-making. However, the practice of reversing an initial refusal to assess once an appeal is lodged, continues to cause unnecessary further delay. Enabling greater transparency and information on the Panels, including the role of EA Solicitors in the decision-making is crucial to improving the efficiency of the SEN process. It is critical to protect the right to Statutory Assessment and ensure no other factors, such as resource or capacity considerations, are influencing decision-making. No child should be denied access to Assessment when the required evidence had already been made available.

Case Example: Following a long period of trying throughout the primary school years to get the appropriate SEN support for a young pupil, including contact with DARS and a previous refusal for statutory assessment, which was not appealed, the parents contacted SENAC. There was considerable evidence indicating the need for a

statutory assessment and the school were very supportive. Both parents and the school were concerned about this child, who was withdrawn and unhappy, and despite school's best efforts within the resources available to them, could not provide or access the specialism to support the complexity of need. SENAC advised submitting another request for statutory assessment which despite support and strong evidence from the school was again turned down by the EA. However, this time unlike the previous refusal to assess, this decision was appealed. Shortly after the appeal was lodged the EA agreed to carry out the Assessment much to the relief of the parents and school. This eventually led to a Statement of SEN. The family report this child is now *'happy and sociable in school and doing well academically with the support of the Statement.'*

Case Example: A young child with social and communication difficulties was about to start school. The parent had been advised to request Statutory Assessment, but this was refused. The EA Officer contacted the parent offering to return the case to the Statutory Assessment Panel. However, the EA Officer did not know when the Panel would meet or guarantee the child's case would be considered at the next meeting. This lack of information on how long it may take to progress the case and return it to the Panel concerned the parent. Confused and uncertain how to proceed and, querying if this meant an appeal was unnecessary, the parent contacted SENAC for advice. On SENAC's advice an appeal was lodged. The EA did not contest the appeal and initiated the Assessment.

4.4 Lack of information and inconsistencies on the criteria for Statutory Assessment Consideration

The current SEN Code of Practice provides statutory guidance on the criteria applied by the EA to determine if assessment is necessary. That determination is reached by considering *'whether there is convincing evidence that, despite relevant and purposeful action by the school, with the help of external specialists, the child's learning difficulties remain or have not been remedied sufficiently.'*³ The lack of standardised information available on how this criterion is interpreted and applied by the EA and, the apparent inconsistency in its application, have contributed to the likelihood of needing to appeal. Information provided to parents varies. For example, one parent was informed her child must have received three sessions of behaviour support before she could request a Statutory Assessment. This criterion does not appear to be applied consistently across the different EA regions. Significantly, it is not a criterion that must be met before a parent can request a Statutory Assessment.

4.5 Reason for Refusal - Access to Educational Psychology and External Specialists

³ 3.21 Code of Practice on the Identification and Assessment of Special Educational Needs 1998

A refusal to Statutory Assess is often based on the EA's conclusion that, the needs of the child can be met from within school resources and/or access to EA's Pupil Support Services or, the child has not yet been seen by the Educational Psychologist (EP). This is viewed by parents and practitioners as unjust and unfair, as it is the EA's policy to impose limitations on schools, in respect of the number of children they can refer to the Educational Psychology Service and the limited capacity of Stage 3 services which prevents the child from receiving this support. Despite these barriers, no further action is taken to enable the school to immediately refer the child to those services once the refusal to Assess has been made.

It is also, unacceptable to state the lack of Educational Psychology involvement as a reason not to carry out a Statutory Assessment. If the absence of input from the EP Service, means that the EA are not in a position to determine if it is necessary to make an Assessment, then they should enable immediate access to the EP Service to inform their ability to determine necessity before the decision to refuse is made.

As the statutory guidance on criteria to aid the decision to Assess within the SEN Code includes, '*help from external specialists*,' EA policy and service capacity which creates additional barriers to that 'help,' compromises the ability to justly apply the criteria and, may create more grounds for an appeal.

4.6 Parental Perspective

The reversal of the EA's original decision not to assess, once a parent has lodged an appeal, is hugely frustrating and confusing for parents when that reversal is based on evidence already submitted and considered, yet no reason or explanation is given by the EA for the reversal. Parents' relief that an Assessment will take place does not minimise the stress already experienced, nor does it eradicate the question as to why the decision to assess could not have been made, weeks earlier, when the EA Panel first examined the evidence. Many parents believe this practice is either, a strategy to delay or avoid a Statutory Assessment, poor judgement on the part of the EA, or is influenced by resource considerations rather than the needs of the child. Parents have commented as follows:

'I think EA just decided they had no choice. The evidence was there to show the child needed help. I think they make you appeal because the system is so far behind that it is just easier to put people to the appeal process.'

'Because the primary evidence was enough.'

'I think there is a strategy within the EA to make the process as difficult as possible and to attempt to cut costs. The whole process is an attempt to reduce the number of children getting the help they require so that they save money.'

'Because they were wrong, they either didn't look at my son's case before properly or they just turn everyone away.'

'I feel that more than enough evidence was submitted in the first instance.

'Our guess is they hope people will drop out of the system it is so difficult.'

'I was told it is not unusual for very strong cases to get refused and to appeal if this happens. Sure enough, I was refused but accepted on appeal with no question or answer given. It appears to me that it is standard practice to reject first time. It is a totally appalling process, mentally and emotionally draining trying to fight so called professionals to get basic support for my child.'

'I honestly don't think it was even looked at to start with. I think it was just declined and maybe they hoped I wouldn't pursue it.'

'The process should be more accessible, less stressful, less confusing and intimidating. It needs to be quicker and simpler. The fact that parents are forced to appeal and provide no additional evidence, yet EA concede just before the Hearing is a source of great frustration for many. They feel it is a waste of time and resources which could be circumvented if the correct decision was made in the first place.'

4.7 Communication with Parents

Parents considered the communication and information provided to parents on the EA's decision not to assess, inadequate in terms of satisfactorily informing parents how the decision was reached. Parents seeking further clarification on the response from the EA are often frustrated by the difficulty they encounter contacting EA personnel. They find the EA's inability to provide any further information equally frustrating. For example:

'I spoke to three people from the EA who couldn't give me a reason other than doesn't qualify' (Parent)

It is very positive that the EA are currently reflecting on the appeal process and their role and have engaged with stakeholders and organisations. SENAC have appreciated recent opportunities to engage with the EA on concerns surrounding appeals. However, given the responses and experiences of parents expressed in this research, addressing issues on the refusal to Statutory Assess should be a priority for change, to minimise the ongoing delay in accessing assessment.

4.8 Summary Conclusions

- It appears to be the act of lodging an appeal that is the catalyst for action and causes the EA to reassess their decision not to Assess. It is not the 'Reasons for Appeal' which bring about the concession from the EA, as often these are a repetition of the facts and evidence already presented to the EA.
- The practice of refusing to carry out a Statutory Assessment and later reversing that decision, unnecessarily delays a child's access to the assessment and the potential SEN provision required. It also places additional pressure and stress on parents.
- The lack of transparency in the use of Panels, the process of examining evidence, the application of the criteria for assessment and their decision-making processes, all contribute to the need for an appeal.
- Poor communication in imparting reasons for decisions and how the evidence was used, leads parents to feel that their child has not received a fair and just application of the SEN processes.
- The use of access to the current Stage 3 Specialist Services or Educational Psychology Services as a reason for refusal, is neither reasonable nor acceptable when it directly relates to an EA policy and capacity which limits the availability of those services in schools.
- Capacity of Stage 3 services must be addressed by Government funding to enable capacity to meet demand.
- A request for Statutory Assessment is not made lightly and is often submitted after years of a child struggling at school without adequate support. The system could be improved by recognising the length of time a child has been waiting for specialist services or input from Educational Psychology Services, acknowledging the possibility that the child's needs may have regressed and developed to a level of need that requires Statutory Assessment.

5.0 MAIN FINDINGS – THE CONTENT OF FINAL STATEMENT

5.1 Introduction

This Chapter presents the main findings of the research in terms of trends and key issues of concern in relation to appealing a Statement of SEN. Parents have a right to appeal Parts 2, 3 and 4 of a Final Statement which covers the special educational needs of the child, the SEN provision in the Statement and the school named in the Statement. Appeals on the Final Statement are the second most common reason for appeal within SENAC's case work with 111 appeals on the Final Statement lodged with SENDIST. The majority of these were in relation to Part 3 SEN provision. This was similarly reflected in the data from the Online Survey, with 26% indicating contents of the Final Statement as the reason for appeal. (Table 2.4) Appeals related to the school named in the Statement are considerably less represented in those surveyed, and in SENAC's Appeal case work.

5.2 Part 2 and 3 of the Statement - Special Educational Needs and SEN Provision

The consensus view in relation to the most common reasons for appealing Part 3 SEN provision was, the failure of the EA to specify and quantify the nature and type of the provision or, that the level of provision was considered inadequate to provide for the needs of the child as identified in Part 2 of the Statement and the evidence submitted in the 'Advices' which informed the Statement. Despite the legislative duty on the EA to specify the provision within Part 3 of the Statement⁴ and to draft '*clear and unambiguous Statements*,'⁵ the description and level of provision continues to be drafted in general terms, falling short of the statutory requirement. Statements drafted in this way will inevitably require an appeal.

A Statement cannot be appealed until it has been finalised. Appeals on Statements are therefore a cause for concern due to the significant length of time it can take for the Final Statement to be received. According to SENAC's internal appeals casework records, it is common practice for various drafts of Amended Proposed statements to be produced in the EA's efforts to reach an agreed draft with the parent. While this ongoing negotiation is both positive and necessary, it can also cause considerable delay, if several Amended Proposed Statements are drafted. Where it is evident no agreement can be reached, and the parent requests the Final Statement, there should be no further delay and the appeal process should be initiated. If Proposed Statements were issued, in the first instance, with the appropriate and required quantification and specification, this would reduce the need for further negotiation and appeal. However,

⁴ Art 16 (b) Education Order Ni 1996

⁵ 4.19 Code of Practice on the Identification and Assessment of Special Educational Needs 1998

the EA will only quantify in the Final Statement if requested to do so by the parent which means there is a greater chance an appeal will be required.

The practice of drafting Statements which are limited in terms of the SEN provision and are unspecified and unquantified persists, despite considerable concern expressed about this practice from many sources over many years.⁶ Part 3 provision will often be described in very general terms, using standard phrases and terminology which are systematically applied to Proposed Statements, rather than using terms relating to the child's individual needs and to the objectives of their Statement. Parents who are informed of the opportunity to express their concerns in relation to the Statement and to make representations for amendments and specification are in a stronger position to get meaningful SEN support for their children. However, the Statement is about the child and the evidence provided to inform the EA's decisions on the SEN provision required. It should, therefore, never be dependent alone on the parent's ability or knowledge of how the Statement might be improved and specified, that is the duty of the EA.

Case Example: After struggling through years in school where our child was not receiving the SEN support needed, we decided on the school's advice to request a statutory assessment. We were delighted that our child would now get the help needed, and the school were supporting this, the downside was the teacher warned that although the school recognised our child needed considerable assistance, a Statement may not guarantee the level required. I felt I needed more advice and contacted SENAC who supported us through the statutory assessment. However, when the Statement came, it was so vague and offered little support and certainly not the level indicated by the school. With SENAC's support we negotiated amendments to the proposed statement with the EA, but the weeks were passing quickly, and the delay was not helping my child. On SENAC's advice we decided not to waste any more time with proposed amendments as it was clear by this stage there was little chance of securing the provision needed despite the strong evidence of need and requested the final statement be issued without further delay to allow us to appeal. With SENAC's support, we started the appeal of the final Statement and several weeks later the EA confirmed they would provide 30 hours one to one classroom assistance for my child, and we did not have to go to a Hearing. I truly believe the reason my child has the assistance needed was because we appealed and would not accept the initial SEN provision in the various amended proposed statements which fell short of the level of support needed. Our child is more settled in class and even achieving now, thanks to the classroom assistance and the Statement. (Parent's testimonial)

5.3 Insufficient Detail in Part 2

Concerns were also expressed that Part 2 of the Statement, which identifies and describes the child's special educational needs, does not always fully reflect all the

⁶ The State of SEN Statements: The Case for Specification and Quantification Children with Disabilities Strategic Alliance (CDSA)

child's needs. This section can be lacking in detail, focussing mainly on the primary need, and thereby minimising the detailed description of needs. The Objectives of the Statement and the SEN provision in Part 3 must ensure all educational needs can be met within the Statement. If Part 2 fails to include any special educational needs, then the provision to address those needs may not be included and reflected in Part 3.

5.4 Working Documents

Often during the appeal process on the Statement, a 'Working Document' is produced, which effectively reverts the Statement to a proposed Statement to allow more opportunity for revisions on the contents. Amending the Statement in this way was considered by practitioners to be a useful tool with the potential to avoid the matter going to Hearing. However, concerns expressed on this practice included:

- The additional time added to the process to progress a Working Document.

Case Example: Appeal of Final Statement was first lodged with SENDIST in October 2018, a working document was issued to the parent in November. Over the next few months further representations and negotiation continued, including a recommendation from Educational Psychology that the child required a high level of individual assistance. A revised working document was issued early in 2019, Further changes were proposed and negotiated, and the Working Document was satisfactorily finalised four months later. From lodgement of the appeal to final statement the process took over seven months.

- While SENDIST may sometimes issue a timeframe for completion of the Working Document, there is no statutory time limit to complete a Working Document. This can mean that if the timeframe is not adhered to, there is no consequence from SENDIST.
- Once the content of the Working Document is agreed, the appeal is withdrawn. This places the Statement back to the consideration of the Education Authority's Panel or Committee on the ratification of Statements. There was concern that with the appeal withdrawn, if the EA did not ratify the Statement, this may be a risk. There was, however, no indication from either practitioners or parents to this having occurred. However, EA SEN Officers often provide information and direction confirming '*any Statement made or amended by the EA must be ratified by committee*' which suggests no assumption can be made that a Statement will be ratified. Ratification of Statements occurs with all Statements not just those drafted from a Working Document. However, there is no legislative duty to support the assertion that a Statement must be ratified by committee. In SENAC's experience this can also delay the issue of a Final Statement.

5.5 Minor Concessions to Improving Statements

Where an appeal on a Statement had progressed to a Hearing, concern was expressed on the concessions offered by EA. Although it is positive that the EA make concessions on improving the SEN provision at Hearing, this provision still fell short of the level required and only reflected minor adjustment, particularly in relation to adult assistance.

In Hearings, the Annual Review (AR) mechanism has been asserted by the EA as the means to further adjust the level of provision if required. However, amendments to Statement provision evidenced and requested at AR, are not guaranteed and currently there is no appeal right for parents if the EA do not amend a Statement following an Annual Review. This right of appeal will be introduced under the new SEND Act 2016 once the Act has fully commenced. While SENAC welcome this new right, it does not reduce concern in relation to preventing any further delay to ensuring a Statement reflects fully the provision required at the time of issue. The Annual Review process does of course exist to enable a Statement to be reviewed and amended to respond to a child's changing needs, but not as a rationale during an appeal to limit provision where concern still exists. This risks further delay in providing the right level of support for the child and compromises their opportunity to benefit from the Statement when **first** issued.

Decisions on the level of SEN provision should not be made on the assumption that the SEN provision can be the subject of a further appeal if not adequate to support the child. The Final Statement should set out the SEN provision required to meet the child's needs based on the professional and parental advice submitted to inform the Statement at that time. All parties should be confident the SEN provision in the Statement is adequate at the point of appeal. This is yet further potential for delay in providing the right level of support for the child.

5.6 Failure and delay in Implementing Tribunal Orders following a Hearing on SEN provision within the Statement.

Concern was also expressed about the failure of schools to implement the SEN provision in Statements secured following a SENDIST decision and EA's lack of action to address this issue. This was described as hugely frustrating and upsetting for parents who have gone through the process and their child is still denied the support secured through SENDIST. The lack of accountability and action when this occurs is concerning to both parents and practitioners. As summarised from one parent's experience:

'The school are not delivering in line with SENDIST decision, and my child is struggling with attendance again due to lack of delivery of provision specified currently. When you do finally make it in front of SENDIST the EA concede on some issues quickly as they have no grounds, but whether you win or not the EA and the school continue to

do what they want. This makes a mockery of the process involving SENDIST and I'm not sure how to ensure school and EA uphold the decision not only in theory but in practice. No accountability for them at all unfortunately.'

While the majority of children do receive and benefit from SENDIST decisions, for those who don't, there may be a need to provide an additional mechanism for SENDIST to hold the EA to account, when Statement provision secured following a Tribunal is not delivered in school for the child. SENDIST currently have no further role beyond the Tribunal ruling if the SEN provision is not provided to the child.

Delay issuing the Final Statement following a SENDIST decision was also a concerning matter for parents and practitioners with examples provided where EA breached the required five-week statutory time frame⁷ to issue an Amendment Notice following a Tribunal ruling.

5.7 Summary Conclusions

- There is a routine lack of adherence to the legislative requirement to specify the SEN provision within Statements which leads to the need for appeal.
- The practice of drafting Statements with insufficient detail in Part 2, can result in insufficient provision being included in Part 3 which, in turn, can lead to the need for appeal. This also includes the inclusion of health needs impacting on education.
- The practice of negotiating and progressing 'Working Documents' with no consequence for a lack of adherence to a required time frame set by SENDIST, and the absence of a statutory time frame, creates potential for unnecessary delay finalising the Statement.
- The absence of any sanction for delay to implement Orders of the Tribunal, within the statutory time frame, lengthens the time taken to provide children with the necessary support they require in school.
- The absence of accountability on the failure to implement Statement SEN provision in schools following a Tribunal ruling undermines the impact of an appeal to bring positive change for the child and, disregards the efforts and resources expended by all parties to take an appeal.

⁷ Art 23 2(d) SEN Regulations 2005

6.0 MAIN FINDINGS – THE HEARING

6.1 Introduction

This Chapter presents the main findings of the research in terms of trends and key issues of concern in relation to the Tribunal Hearing.

6.2 What Types of Cases Progress to Hearing

Within SENAC's case work and the responses from those consulted it is noted that only a small percentage of appeals supported, progressed to Hearing. Of 315 appeal cases supported by SENAC, 3% progressed to a Hearing, the majority on Final Statements, with a smaller percentage on school placements. (Table 1.6) In the Online Survey 18% reported that they had a positive outcome of an appeal at Hearing with only 2% reporting that the Hearing found against them. (Table 2.5)

From the data and experiences SENAC have reviewed, appeals involving Final Statements may be more likely to proceed to a Hearing. Perhaps, this is because they often involve more than one issue, making agreement and resolution more challenging for both parties, prior to Hearing. Those appeals involving SEN provision were also less likely to be resolved prior to a Hearing, particularly where the level of specialist resources or adult assistance may require a greater financial investment from the EA.

Some parents and practitioners have commented that, appeals relating to children who present in school with a behavioural response to their learning challenges which causes disruption or distress in class, are more likely to be conceded, without the need for a Hearing. By contrast, appeals relating to children whose needs were just as significant, but were '*quieter*' or '*compliant*' in class, and whose needs were less obvious, may not be perceived by schools as a priority for intervention and are more likely to proceed to Hearing. This is an interesting observation and one which is echoed across all SENAC's services. Children who are struggling but do not have behavioural challenges or causing disruption in class may not be prioritised for SEN support. If this is characteristic of the broader SEN response it is important for SEN training and awareness in schools to be more vigilant and sensitive to those '*quieter*' children who are not expressing that struggle in an obvious way but, may still require the full weight of the SEN Framework and EA's assessment to support them.

Our review indicated appeals in relation to Refusal to Statutory Assess are less likely to progress to a Hearing. (Table 1.6)

Appeals relating to school placements, particularly where a specialist placement is requested, may be more likely to require resolution at Hearing as, compliance with a parent's preferred special school may be influenced by limited capacity within existing

specialist settings. These appeals may reflect a broader issue in terms of capacity within the special school sector and the limited number of specialist settings.

Case Example: Primary aged pupil unable to attend mainstream due to the impact of learning difficulties and disability impacting on the child's ability to cope within this setting. The child had been out of school for some time and the parents believed a special school was the only appropriate placement to support the complex profile of needs. The EA would not agree to name the parent's preferred special school in the Statement, alternatively naming a mainstream setting with additional SEN support. The Statement was appealed, and the matter proceeded to Hearing. SENDIST ruled the Statement be amended to name the special school preferred by the parents.

There must be greater recognition of the lack of specialist settings and special school places and the challenge this creates for the EA to place children in specialist settings which then creates additional need for an appeal.

Recent efforts by the EA, resulting in an increase in the capacity and availability of specialist settings are therefore welcome. However, concern remains that children with complex needs are still not accessing the right school setting. SENAC's case experience has shown that this has a negative impact on the child, as it compromises school attendance and increases the risk of school refusal. The need to continue to monitor and address the availability of specialist settings, and in particular, the capacity pressures on special schools, must continue to be a priority focus for Government and the EA.

6.3 The Hearing Experience

Generally, the overall parent and practitioner experiences of the SENDIST Hearing were positive. Practitioners find Hearings work well in practice, conducted in a fair and transparent manner. They believe the informality of the Hearing enables parents to talk freely during proceedings, rather than formal rules of evidence being applied which can restrict discussion. Hearings are viewed as an essential opportunity for a parent to express their views and listen to the EA's perspective and position on the appeal. Often this may be the first time the parent and the EA have had the opportunity to listen first-hand to each other's views, as contact and discussion with the EA may not have taken place beforehand, during the appeal process. Both parents and practitioners describe how difficult it is to contact EA Officers and believe that opportunities to discuss the child's case which could avoid the need to progress to Hearing, may have been missed.

While some parents expressed their experience of the Hearing in negative terms, feeling '*side-lined*' and unable to put their views across and a smaller number describing the Hearing as '*biased*', most of those SENAC have supported and 54% of the Online Survey respondents considered the Hearing to be a fair, equitable and transparent forum. (Table 2.7) This is an important reflection on this independent aspect of the statutory SEN process. In SENAC's experience, parental views of the

SEN statutory process are often negative. Decisions on assessment and SEN provision are perceived as inadequate and unfair, with children's needs and best interests not prioritised. It is positive for parents to learn from other parents and practitioners that, their first-hand experience of a Hearing generally confirms the independent and equitable nature of this forum. The cautionary note, however, is that this is the experience of parents supported at a Hearing. For those without representation, the experience may be very different, and this was highlighted as a matter of concern.

The two most common descriptors used for the Hearing, in the Online Survey, were '*stressful*' and '*intimidating*'. This is reflective of the feelings and anxiety parents repeatedly express to SENAC when seeking support and representation at the Hearing. It mirrors parental experience across many aspects of the whole SEN system. Recognising this impact on parents and, addressing this through the way a Hearing is conducted, would assist parents to engage more positively. It would also encourage those who do not appeal, because they are fearful at the prospect of attending a Hearing, as reflected in the Online Survey, where 12% decided not to appeal due to fear and worry relating to the Tribunal Hearing. (Table 2.1) This emphasises the need for parents to have greater access to support and representation through the Appeal process and at Hearings. Practitioners who have attended Hearings with parents understand that participating in this formal forum can be intimidating and emotional for them. It is also important to recognise that both the appeal and the Hearing tend to occur when many parents are exhausted from weeks, months, even years, of effort, to secure support for their child. The pressure of an impending Hearing can compound that stress. Parents view this as the '*last chance*' to secure support for their child. Practitioners report that, where the parent's anxiety is recognised by the Tribunal Panel, the Hearing is delivered in a less formal manner while not compromising the serious nature of this forum. This enables constructive discussion between the parties and helps parents to relax and speak more freely.

6.4 Representation at Hearing

Whilst the intention to enable the Hearing to be parent-friendly and a less formal, non-adversarial space is recognised, there was awareness, particularly from practitioners, of the challenge for parents who may attend without representation, placing them at a disadvantage. The experience was recognised to be stressful for anyone unfamiliar with legal forums. As most parents may be unable to afford a solicitor and, free representation is limited, concern was raised in relation to the inequity for unrepresented parents, presenting their case for appeal, in comparison to the EA who have significant resources and can attend with their solicitors.

While it is recognised that Tribunal Chairs will conduct Hearings, where a parent is unrepresented, in a manner that will mitigate any disadvantage, parents report finding such Hearings stressful and difficult, having to simultaneously advocate for their child and face 'cross examination' by an experienced EA lawyer. It may be a useful future

exercise for the Department of Justice or SENDIST to survey these parents, to understand and examine their experience, and the effectiveness and outcome of their appeal, compared to parents who were represented. This would identify the extent to which parents and, consequently their children, were disadvantaged by a lack of representation in Hearings. This would inform what steps might be taken to ensure the Hearing is an effective and equitable forum for all, where the parent does not require legal representation. Such an exercise might also identify the need to increase the availability of independent or statutory funded sources for representation or perhaps, extending the legal aid scheme to include SENDIST Hearing representation. Addressing these issues is not only crucial for parents, but with the transfer of appeal rights to young people over compulsory school age, within the new SEND Act, it is even more important that these young appellants are represented and supported to ensure they do not experience inequity or disadvantage.

6.5 Common Concerns of Practitioners & Parents

Our engagement with parents confirms parental fears and emotions are part of the journey through all the statutory SEN processes parents travel, not just in relation to appeals and Hearings. What is important though is to highlight learning and consider changes to minimise the stresses. It is the responsibility on all who determine and influence the SEN decision-making processes and the outcome for the child to recognise and empathise with the impact on the parent and child and respect a parent's right to progress their child's needs and apply best professional practice in their engagement with parents. Concerns expressed by practitioners and parents included the following.

6.5.1 Attendance at the Hearing

A lack of knowledge of who will be attending the Hearing. Parents can attend a Hearing without any awareness or confirmation of who will be in attendance, which adds to the parent's stress and expectations. Parents may be unaware that they can request a Witness List. To address such concern, it may be beneficial for SENDIST to issue the Witness List prior to the Hearing as standard practice, rather than placing an additional burden on a parent to request this.

6.5.2 Untimely Notice of Decisions not to Contest an Appeal

Concern and frustration were expressed on the late notice from the EA that they had decided not to contest Appeals close to the Hearing date, particularly where the EA communicate their decision the day before a Hearing or, even on the day of the Hearing. One example provided was a case where the EA failed to attend a Hearing and conceded the appeal just as the Hearing was due to start. The view of those attending was this demonstrated little regard for SENDIST and those attending. While it is positive the appeal was not contested, due consideration should be given to the stress and pressure on parents, an impending Hearing brings, even when they have representation to support them. The EA should address this in recognition of the fact

that, the later decisions to concede are communicated, the greater the stress on the parent and the longer the delay to support the child's needs.

6.5.3 Adjournment Requests

Practitioners expressed some concern about the fact that, adjournments of the Hearing and extension to Case Statement deadlines, can be requested by the EA, but in the current process, consent of the parent is not required. Whilst respecting the decisions of the President of SENDIST, it was suggested that the parent should be afforded an opportunity to provide their views, while this is being considered. Case examples demonstrate parents have been opposed to adjournments as it adds to the length of time, not just for appeals but the whole process preceding the Appeal. One recent case example of adjournment added an additional six weeks to the process. However, practitioners also highlighted that SENDIST is very helpful when adjournments are requested by the parent. Notwithstanding the fact that the decision to adjourn should ultimately rest with the President, it may be beneficial to afford both parties the opportunity to give their views on requests for adjournments.

6.5.4 Lack of Opportunity to Discuss Cases with EA Officers Prior to Hearing

Parents and practitioners expressed concern about the lack of opportunity to discuss appeal cases directly with EA Officers prior to a Hearing. Whilst it must be acknowledged that, the current climate and additional pressures and restrictions due to the pandemic have impacted on the EA's availability, lack of contact was already viewed as a challenge, prior to the pandemic. Many of those consulted called for better communication between the parties pre-Hearing. One example of the impact of lack of communication and transparency was a school placement issue where, it was understood there was no place available, but at the Hearing it was confirmed there was a place available, but the objection of the EA was about the suitability of the school placement. If this information had been known and made clear earlier in the process, it would have allowed more appropriate focus on the evidence prior to the Hearing. Having an opportunity for communication and discussion with the EA, prior to Hearing, would enhance transparency.

6.6 Summary Conclusions

- Cases in relation to Final Statements and School Placements are less likely to be conceded by the EA and therefore more likely to proceed to Hearing.
- The shortage of special school placements is currently impeding the fairness of the appeals process.
- The Hearing, whilst recognised as being fair and transparent is both stressful and intimidating for many parents who are unfamiliar with legal forums.
- Unrepresented parents may be disadvantaged at a Hearing when faced with the legal experience of the EA.
- There is an imbalance between the parties in relation to knowledge about witnesses attending and in relation to requests for adjournment, extensions to statutory timeframes.
- There is insufficient opportunity for discussion of cases during the appeal process and, most importantly, prior to Hearing.

7.0 MAIN FINDINGS – THE IMPORTANCE OF SUPPORT TO APPEAL

7.1 Introduction

This Chapter presents the main findings of the research in terms of trends and key issues of concern in relation to the importance of parents having support to appeal.

Our research has shown very strongly the need to ensure parents are supported and informed, not only about the Appeals processes, but also about the actions and decisions on SEN which precede an appeal. Developing the principle of parents as ‘partners’ within SEN decision-making and, building positive relationships and engagement with schools and the EA, have all been identified as central to building parental confidence and enabling positive outcomes for the children.

Supporting parents when an appeal is required should be a priority within the statutory system. Respecting the parental right to appeal and providing the information and advice needed is paramount. At the heart of every appeal is a child or young person in need. Support for parents enables opportunity for a more positive outcome for the child. Our research highlights the importance of ensuring parents have the support to exercise their statutory right of appeal and ensure they are not participating in a process which compromises that right.

7.2 Parental Experience of Appeal Process

84% of respondents to the Online Survey described their experience of appealing in negative terms, with descriptors such as ‘*stressful*’, ‘*distressing*’ and ‘*intimidating*’ receiving the highest response. Only 5 parents considered the process to be ‘*parent-friendly*’. (Table 2.10) Responses clearly demonstrated overall the appeals process is a significantly negative experience. This is indicative of the level of pressure and stress parents experience and is reflective of the views of parents SENAC has supported who, even with support, find the process challenging and stressful.

Parents also report the negative impact on their mental health and well-being taking forward an appeal can create. They report how difficult it is to challenge EA decisions and the exhaustion of continuing ‘*the fight*’ for their child through an appeal. Anxiety, feeling physically sick with stress, nervousness, overwhelmed by the demands of the process are some examples of the parental experience.

Most respondents to the Online Survey felt they were ‘well informed’ about their right to appeal, with 76% indicating that they received support from a range of organisations and sources. (Tables 2.8+ 2.9) 98% viewed access to independent support and advice as ‘very important’ or ‘extremely important’ for parents appealing. Parents and practitioners alike, felt that parents were disadvantaged by a lack of knowledge,

confidence, and ability to be effective participants in the processes. They called for greater access to advice and representation.

7.3 The Impact of Appeal Support on Parents

It is evident from testimonials received following support from SENAC that accessing independent support for appeals makes a positive difference to the parent's ability and confidence to appeal. The testimonials below are examples of how appreciative parents are of the support and how receiving support progresses the educational interests of their child. Access to independent support and sustaining the capacity of the voluntary sector to provide this is essential. We know there will be similar testimonials from other organisations who provide appeal support demonstrating the need to support parents and their children to appeal and the impact of that support.

Testimonial 1: Having a child with support needs and not knowing where to go to get the best support I contacted SENAC. They were amazing and gave me all the information I needed to be able to request a statutory assessment. At this stage they made me aware of the relevant information that I may need and signposted me to advice and guidance that was available. When I was initially turned down for the statutory assessment I once more contacted SENAC not knowing what I should or could do next. SENAC's Appeals Officer talked me through the process of appealing through SENDIST and the information I would need to make the appeal and helped me prepare for the appeal. Thankfully before we had to attend the appeal Hearing the Education Authority decided to carry out the statutory assessment. Had it not been for the support of SENAC I possibly would have given up when we were turned down. Their advice and support kept me going through the process. Without this support I know my child would not have got an assessment or been issued with a Statement and would continue to struggle. As a result, my child got the support required to do well in school and in GCSEs.

Testimonial 2: SENAC provide a valuable service supporting parents during the whole Appeals process. SENAC assisted me to appeal my child's Statement and helped me complete the Case Statement. They also liaised with SENDIST and the Education Authority on my behalf which was a huge support. The whole process of requesting a statutory assessment and appealing the Statement for a child with a disability is very daunting for a parent who has little experience in this area and needs support to do this. The role of organisations like SENAC is essential for parents like me who are striving to get their child supported appropriately so that they can have the same access to the curriculum as every other child.

Testimonial 3: The whole process of trying to advocate for our child's education and special educational needs has been very daunting. It was extremely stressful to get anyone in the school or the Education Authority to recognise our child's issues for many years and we even had to pay privately for assessments and diagnosis of the conditions our child is living with. It has been an exhausting and time-consuming effort.

We cannot praise the services of SENAC highly enough. They helped us lodge our appeal for a refusal for Statutory Assessment and we needed their help again when following the assessment, EA issued a 'note in lieu' rather than a Statement. We really would have been incapable of doing this ourselves and it was such a massive job. There were so many things to consider and so many pieces of writing and documents which had to be searched through for relevant information. It is difficult to explain how overwhelming the whole process is to parents who have no knowledge of the law or special educational needs. We had no clue how to go about representing our child. SENAC really were lifesavers at a time when we were extremely downhearted and certainly felt like giving up. SENAC pulled out all the stops for our appeal, addressing all the aspects of the law, which we would not have been able to do, giving our child the best possible chance.

Examples of Client Feedback:

'Getting advice from SENAC was invaluable and provided clarity on a very complex process during a time when parents are anxious about their child's education. The advice was always clear to follow. The practical help in completing the forms was also invaluable because there is a fear that something might not be completed correctly, jeopardising, or delaying, the case.' (Parent)

'Without your help and support to appeal, our child would have become another statistic to fall through the net and be left without any educational support which may have been detrimental.' (Parent)

'SENAC provided me with both support and encouragement to continue on the long and daunting process to have an assessment of our child's educational needs. The process and knock backs along the way only added to the pressures of having a child who is struggling in life, and school. SENAC encouraged, guided, and empowered me to continue the process.'

7.4 The Impact on Children and Young People

The outcomes for children and young people can be significant. A successful appeal will secure the assessment and SEN provision that children have been unable to access prior to an appeal, securing a range of additional and specialist resources and intervention and/or an appropriate school placement. All these outcomes offer children the opportunity to learn and progress and mitigate the educational disadvantage and inequity many currently experience. A successful appeal may also enable children who are unable to attend school or, only attending for a limited time each day, to return to school and realise their right to education. For these children an appeal is transformative in enabling greater inclusion and reducing the exclusionary practices many are subject to. Examples of the impact on the children and young people shared by their parents included the following:

'He now has the correct learning environment for his needs.'

'Extra help at school means he has the same opportunities as his peers.'

'A massive difference. The whole process is stressful and very time consuming. The result is that my child has help and support when needed in the school setting.'

'It made a massive difference. The EA would not help, instead they stated they would keep a watching brief on my child. After the statutory review my child got an appropriate school placement with a full-time classroom assistant.'

'My son now has the support he needs in school. He is safe and has assistance to help him progress academically.'

'It has made the transition to grammar school easier and allows him to reach his full potential.'

'He was assessed and found to have severe dyslexia. He was able to enjoy school and all work provided to him, making home life happy because he wasn't coming home with an anxiety build up.'

'It made a huge difference. After nearly five years of fighting, he is now receiving the support he so desperately needs.'

'The Statement offered 10 hours assistance and after appeal got 30 hours, this has been of major importance as our child has been able to settle better in school and schoolwork has improved.'

'This was so important and helpful. Once my son was statemented, he qualified for an assistant which he had been struggling for a long time without due to school staff refusing to listen to my concerns. Now there is a Statement to ensure staff know what his needs are. When it is a parent telling staff I found I wasn't listened to. Now with the statement I feel it is the proof I needed because no one listens.'

7.5 Why Parents do not Appeal

In contrast to gathering the views and experiences of parents who have appealed to SENDIST, SENAC also sought to gain insight into why parents considered an appeal but did not proceed.

To ensure that the appeal process is an effective means of addressing the barriers children face in their education it is also necessary to understand the parental experience influencing their decision not to take an appeal and potentially compromise the child's opportunity to secure support. 41 parents in our Online Survey responded, providing insight into the challenges. (Table 2.1)

Over half of respondents reported a lack of knowledge on how to appeal, fear and worry about the prospect of attending a Hearing, or the most common reason, that

they were tired and worn out by the journey already undertaken to secure support for their child. When asked what would have helped a decision to go ahead with an appeal, responses indicated:

- Provision of more information, advice, and support.
- Assistance with communication and engagement with the EA.
- Communication in more straightforward terms, with less jargon.
- A more collaborative approach with parents, school, EA, and Health.
- Support and understanding from school.

Responses in the Online Survey included the following:

'The SEN teacher at my child's school was no more interested in helping. I fought and went through hell in the primary school years. I could not have coped mentally to fight on.'

'Someone to look after my child to enable me to attend a Tribunal. I had no one at all.'

'Independent advice and support to assist with dealing with EA officials. Some of them are not straightforward or entirely honest while dressing up communications in a very long-winded and hard to understand way which frustrates and intimidates me.'

'More communication with the EA, school and even the Health Trust. Possibly a conference call so everyone knows what point everyone is at. I feel it was a constant list of excuses that one professional didn't know something or hadn't received documents/assessments.'

'More support and more clarity from the school. Easier language used. Maybe professional help and someone with me.'

'I suffer bad anxiety and the thought of going to a Tribunal was just too much for me. So, I am not sure what would have helped.'

'Someone to represent me and stand up to speak in the court room.'

'One of the main reasons I never appealed is because no one in the education system wants to listen or change anything. Knowing that someone would listen and want to hear and help make change.'

Such responses are also reflective of the feedback from parents who contact SENAC for independent support. The exhaustion, lack of knowledge and confidence to appeal are all common reasons expressed. Parents feel unable to proceed without support, advice, and guidance. If this is representative of the wider population of parents engaging with the SEN processes this should inform a different approach to the appeal process. Greater accessibility to the information on how to appeal, demystifying the

Tribunal Hearing, providing a broader range of sources for independent advice and representation, and increasing availability for legal aid to include representation at SENDIST Hearings should all be enabled.

7.6 Summary Conclusions

- The stress for parents is so overwhelming as they strive tenaciously, over long periods of time, to get the right support for their children, that they find the prospect of appeal too daunting.
- Without support parents report that they would have given up as they are so worn out and exhausted by the whole process.
- Parents decide not to appeal because they have insufficient advice, information and support and are fearful of the process.
- Receiving advice and support empowers and enables parents to progress an appeal.
- With support to appeal, positive outcomes mean children are back in school, safe, with the appropriate support, in the right school setting.

8.0 RECOMMENDATIONS ('KEY ASKS')

8.1 Introduction

The recommendations presented in this concluding chapter are offered as solutions to assist improving the appeal process and the parental experience, and in some instances, may prevent the need for appeal. An appeal is an opportunity for parents to get the best for their child but, for the EA, the challenge is to provide the best for every child. To meet this challenge, the EA must be supported and resourced adequately. Strengthening the capacity and responsiveness of the SEN system, to intervene early and effectively, for the children, will reduce the need for appeals and create greater equity within education. Where an appeal is required, parents and young people must be supported and enabled to participate positively and not fear the process.

Through its appeals support service, SENAC has built a very good relationship with the SENDIST. We have consistently found SENDIST to be both professional and helpful in our interactions with them. This contributes to a more positive experience for the parents we represent.

The commitment of the Education Authority and the Department of Education to improve the delivery of the SEN system is evident in the recent initiatives, strategies and reviews undertaken and, in their collaboration and consultation with a range of relevant stakeholders. It is hoped SENAC's reflection on the Appeals process will provide additional insight and information on the issues and concerns, expressed and experienced, by parents and practitioners, to inform the ongoing reforms.

8.2 The Appeal Process

- Communication between parents and the EA needs to be reviewed with a view to providing clear and consistent guidance with the EA and, staff allocated responsibility to keep parents informed during the process.
- There should be increased opportunity for parents to have their views listened to, and reflected, in the decision-making aspects of the appeal process.
- There is a need for greater collaboration between parents, schools, health professionals and the EA.
- Full implementation of the SEND Act 2016 is required.

8.3 Statutory Assessment

- Greater transparency and information must be provided on the EA Statutory Assessment Panels, their decision-making processes, and consideration of evidence.

- Clear, updated guidance must be provided on the criteria applied by the EA to determine the 'necessity' to Assess and how that criteria adheres to the SEN Code of Practice.
- On receipt of the refusal to Assess more information should be provided to the parent as a matter of accountability and best practice, on how the evidence submitted was evaluated and what additional evidence was required to reach the threshold for Assessment.
- There should be greater communication between schools and the EA where a decision not to Assess has stated the needs of the child can be met from within school resources.
- Access to the Educational Psychology Service should be made available to assist the EA in their consideration of a request for statutory assessment in cases where a child has been identified as requiring EP input but restrictions on the number of school referrals has prevented this intervention.
- Greater consideration should be given to the length of time a child has been reported and recorded as having SEN with little or no interventions or progress as part of the consideration for Assessment.
- Priority should be given to increasing the availability of, and access to, Pupil Support Services to enable greater equity and enhanced evidence, to inform the EA's decision on the necessity for statutory assessment.
- There should be improved accessibility and capacity of EA Officers to communicate and engage with parents and representatives supporting parents, prior to, and after, an appeal is lodged.

8.4 The Final Statement

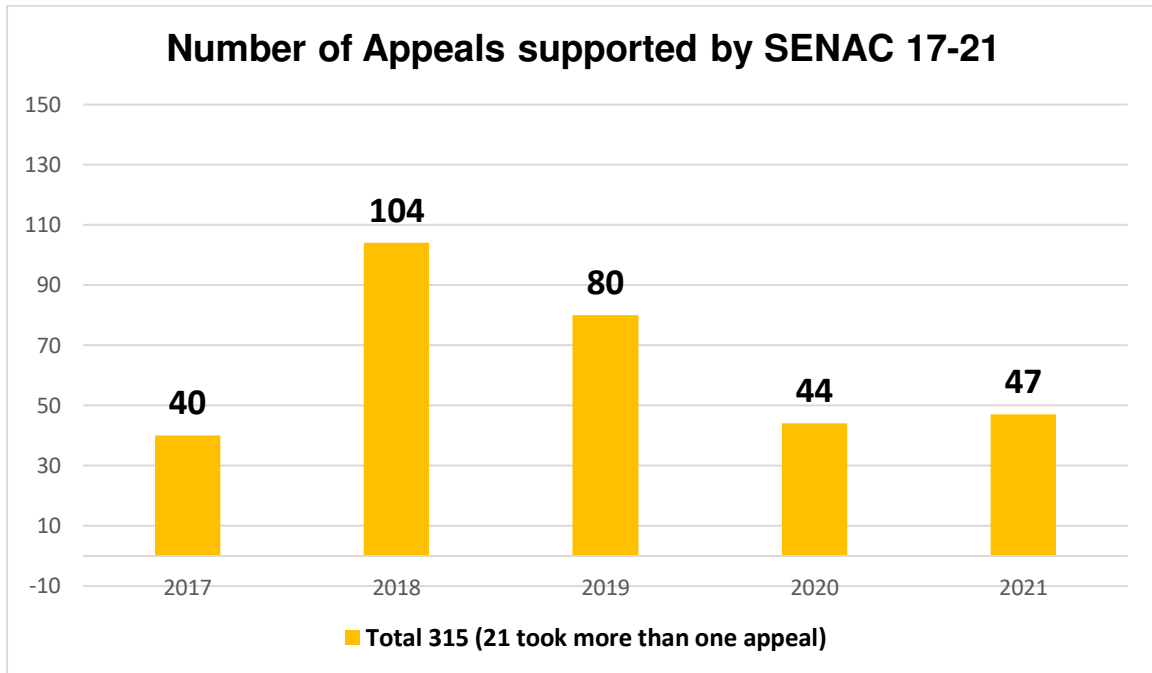
- The practice of issuing Statements of SEN which are unspecified and unquantified must cease.
- There should be a mechanism in place for SENDIST to monitor and address any failure to implement the SEN provision in schools, which has been secured as a result of a Tribunal ruling.
- There should be increased capacity, within the EA, to engage with parents, in constructive discussion, on parental representations on the Proposed Statement, when requested by parents.
- Review and remedial action are required to address delays in implementing Tribunal Orders in accord with the SEN Regulations (2005).
- There should be a statutory timeframe in place for completion of a Working Document to ensure that the process of negotiation and implementation is time limited.

8.5 The Hearing

- A Witness List should be provided for all parties, prior to a Hearing, as standard practice.
- A more equitable approach should be adopted to requests for adjournment, extension to timeframes etc.
- DE and the EA should continue to prioritise the need to increase the capacity of special school placements.
- Consideration should be given to enhancing the availability of free representation and providing legal aid for representation at Hearings.
- The scope to review and compare the experiences and outcomes, for parents unrepresented at Hearing, should be explored.
- There should be increased availability of EA Officers to engage with parents prior to Hearing.

APPENDIX 1: STATISTICS SENAC TRIBUNAL SUPPORT AND REPRESENTATION SERVICE INTERNAL DATA

TABLE 1.1



The variance in the number of appeals SENAC can support annually is dependent on the level of funding available which determines service capacity. 2017 was the Appeals Service startup year. 2020 was significantly affected by Covid. 2021 is reflective of 9 months service delivery.

TABLE 1.2

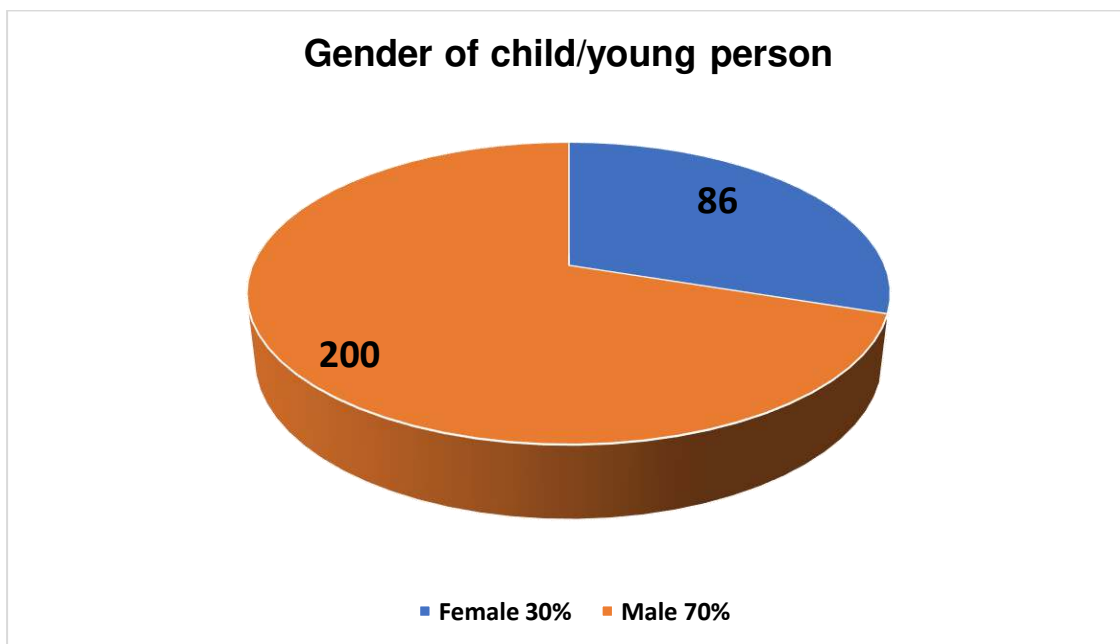
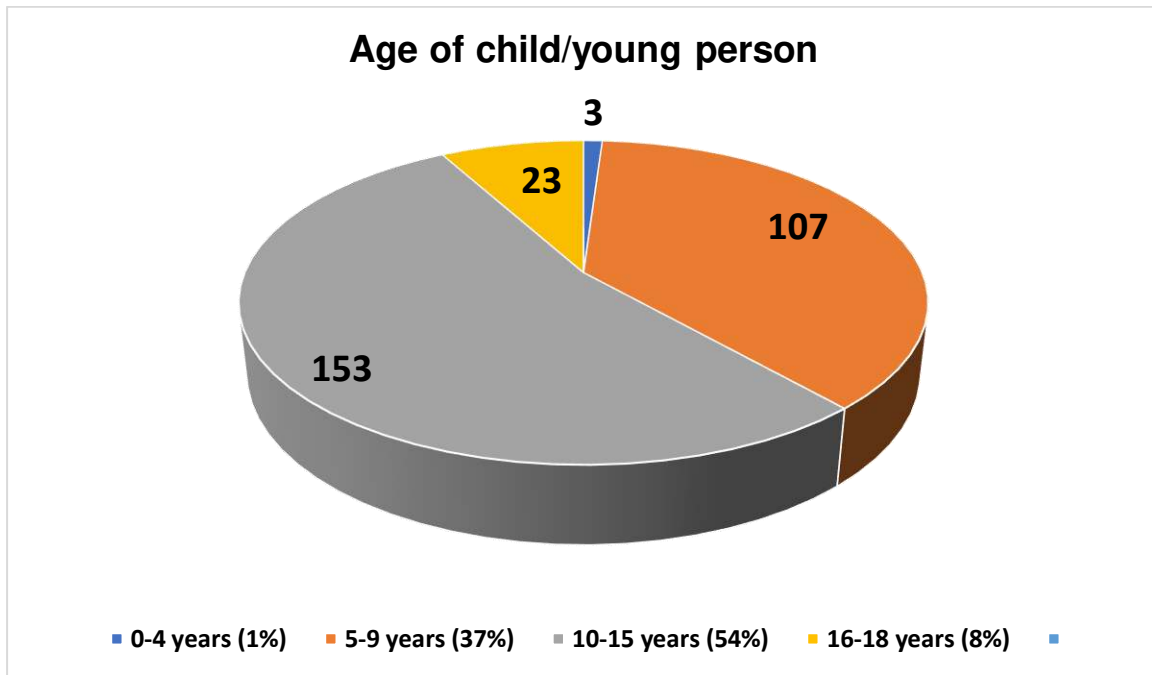
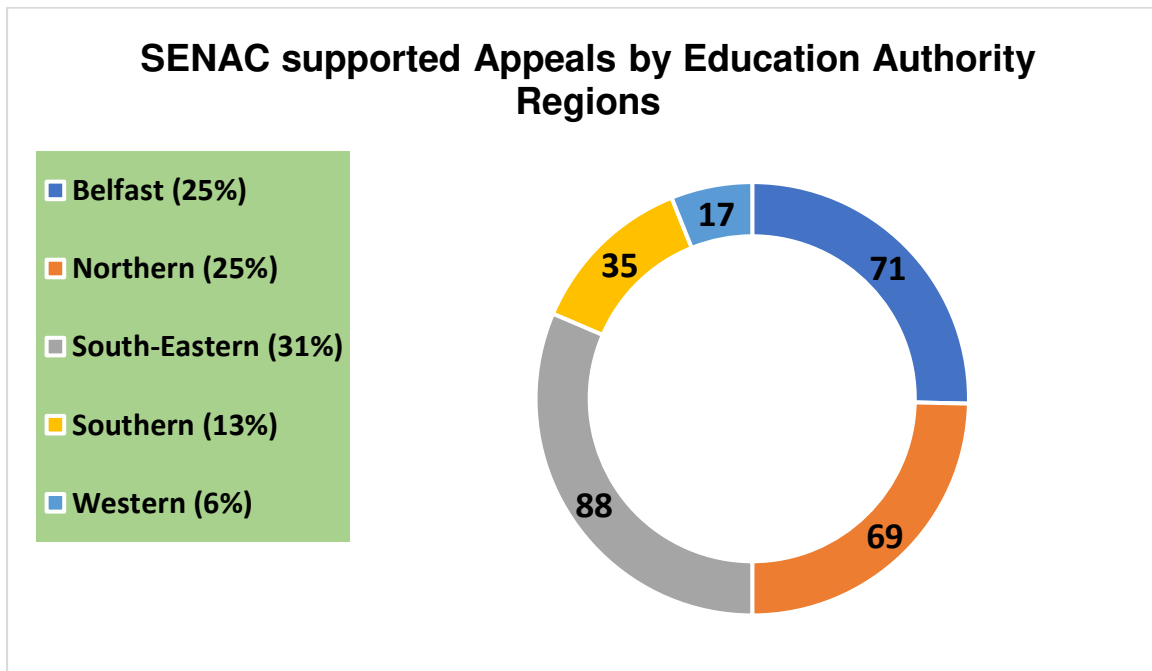


TABLE 1.3



The age and gender distribution of appeal cases mirrors the overall population of our children who have been supported by SENAC's other services since 2017. This suggests in SENAC's experience there is no significant relationship between age or gender and appealing to SENDIST.

TABLE 1.4



The EA region distribution of appeals cases mirrors the overall population of our children who have been supported by SENAC's other services since 2017. This suggests in SENAC's experience there is no significant relationship between EA regions and appealing to SENDIST.

TABLE 1.5

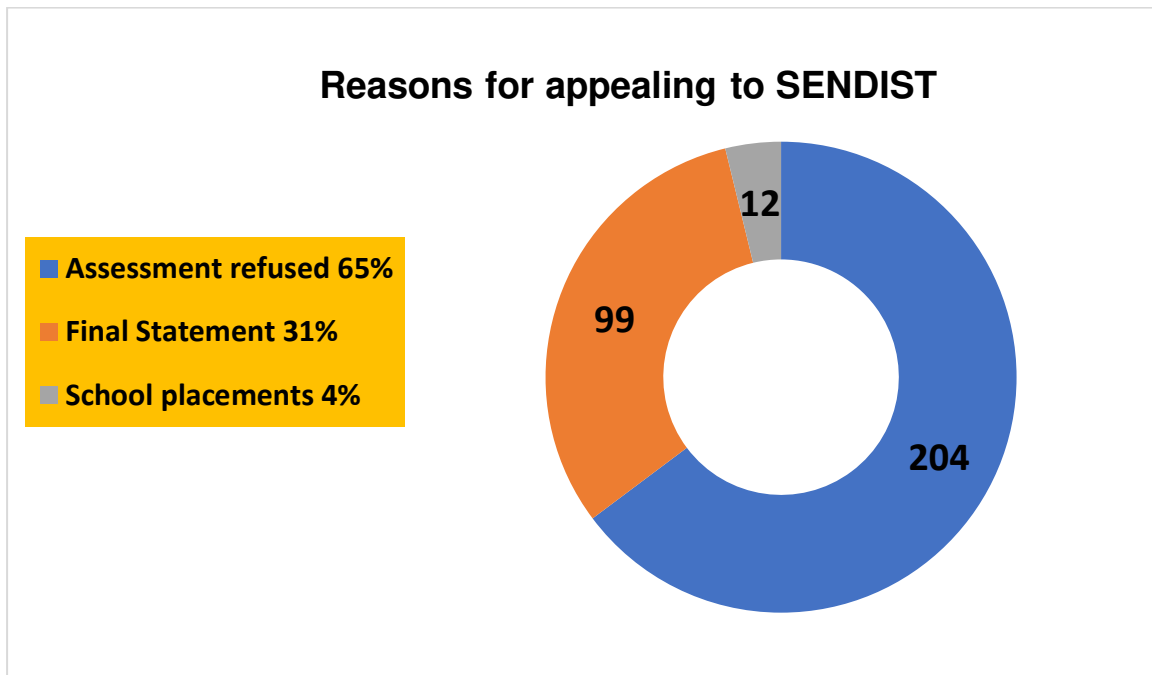
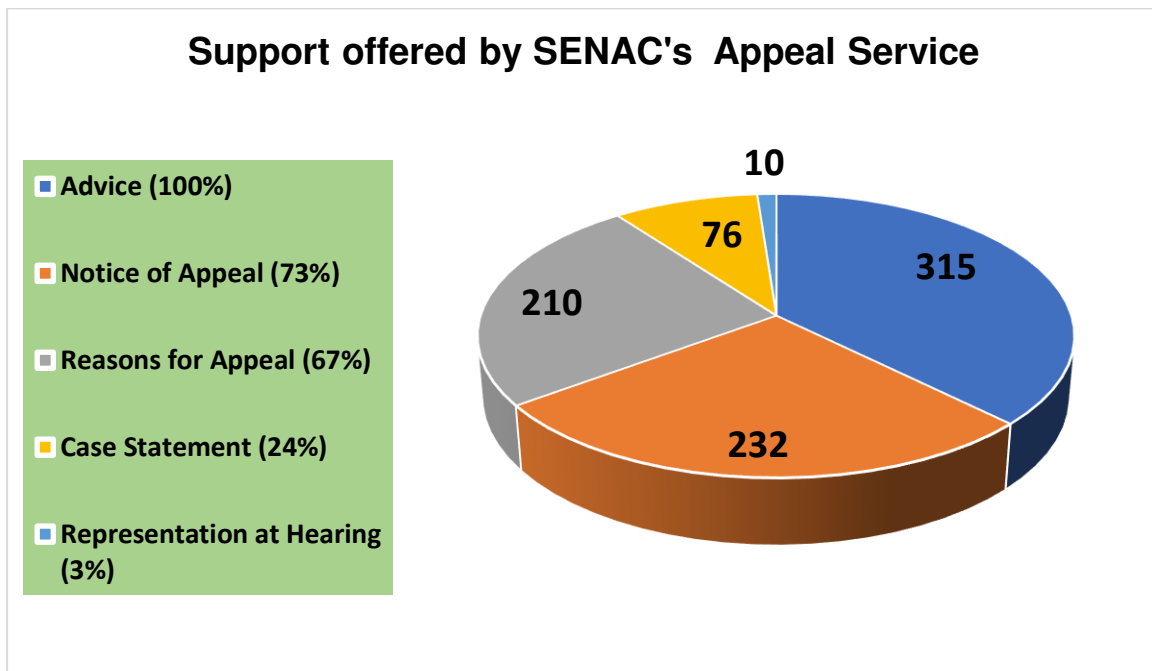
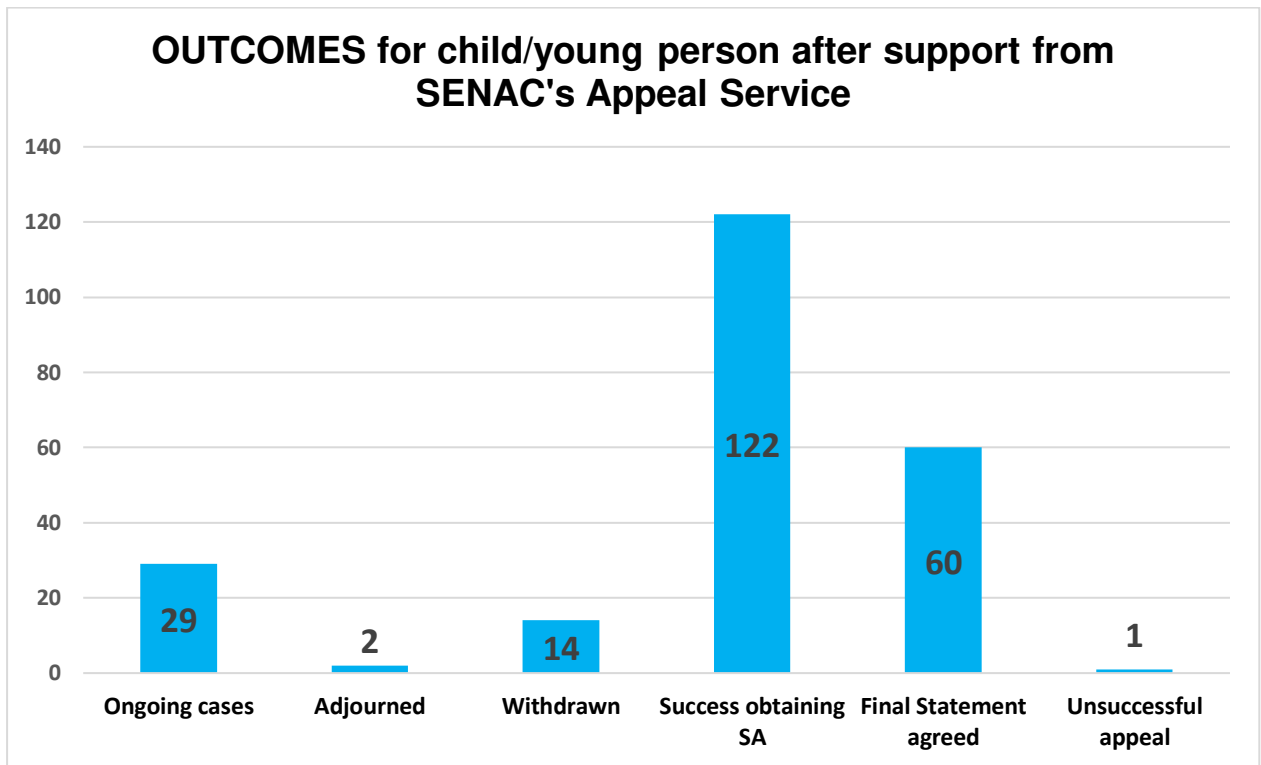


TABLE 1.6



*Of the ten cases (3%) which went to Hearing, eight (80%) were in relation to Final Statements and two (20%) in relation to refusal to Statutory Assessment. SENAC's data indicates appeals in relation to Final Statements are more likely to proceed to a Hearing.

TABLE 1.7



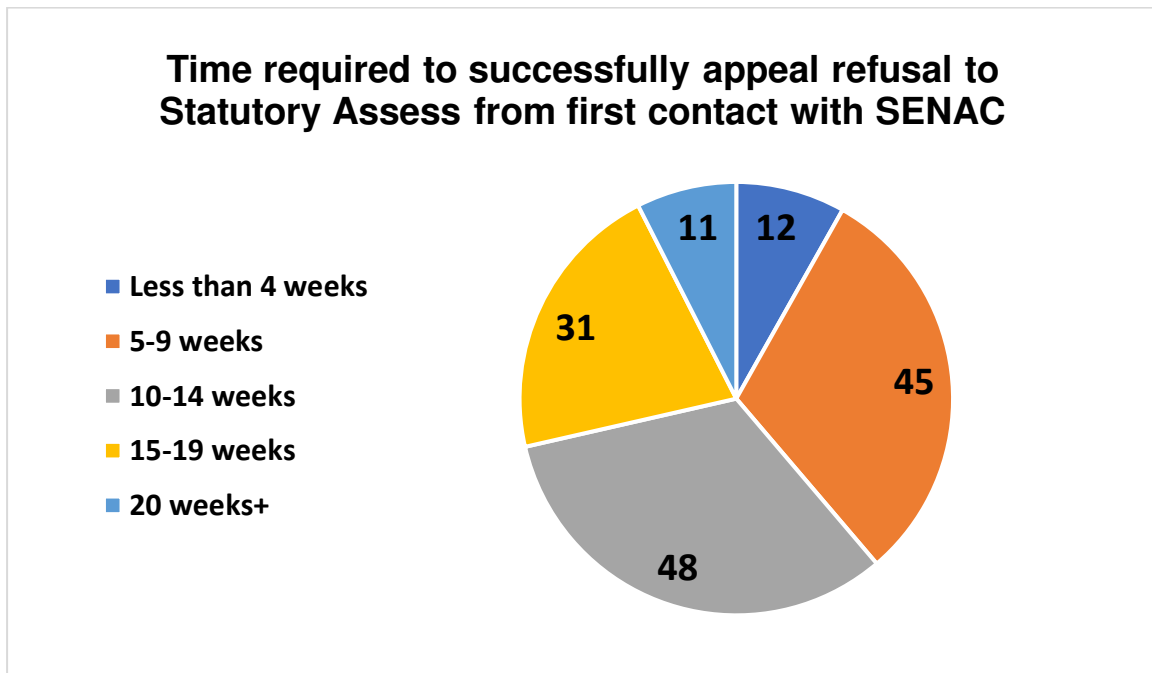
***Appeals in relation to refusal to carry out Statutory Assessment:** 36/122 (30%) of successful appeals required a Case Statement. 68% were conceded by EA after an appeal was lodged. 2% proceeded to Hearing.

***Appeals in relation to Final Statements:** 40/60 (67%) of successful appeals required a Case Statement. The remaining 23% were conceded by the EA after an appeal was lodged.

*SENAC's data indicates appeals relating to Statements are more likely to require a Case Statement than appeals in relation to a refusal to Statutory Assess.

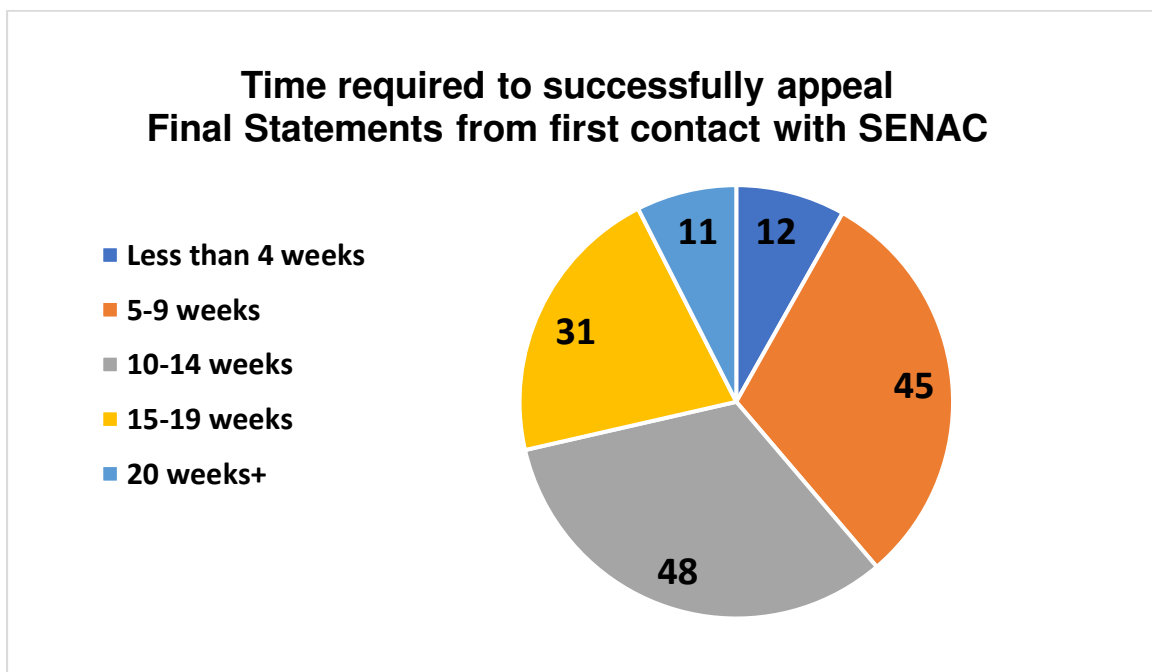
*The remaining cases are where the parent proceeded themselves after initial advice from SENAC or, the case was passed to a solicitor or another organisation due to SENAC capacity issues.

TABLE 1.8



Average length of time to achieve a positive outcome at SENDIST in relation to refusal to statutory assess is 12.6 weeks. This is from initial contact with SENAC until notification from SENDIST that the EA decided to carry out SA. Support in successful appeals in relation to statutory assessment ranged from 2 weeks to 40 weeks.

TABLE 1.9



Average length of time to achieve a positive outcome in relation to a final Statement is 15.8 weeks. This is from initial contact with SENAC in relation to the appeal until the Statement of SEN has been satisfactorily finalised. Support in successful appeals in relation to Final Statements ranged from 2 weeks to 43 weeks.

APPENDIX 2: ONLINE PARENT SURVEY

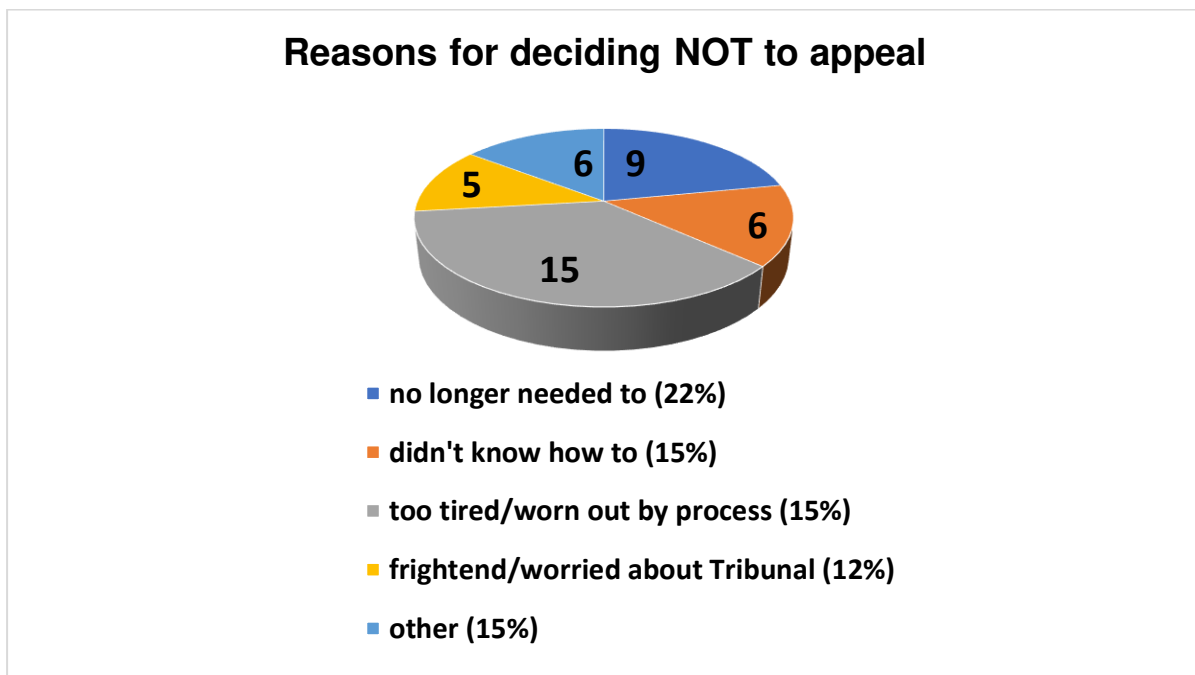
SENAC carried out an Online Survey in July and August 2021 to elicit the views of parents in relation to the appeals process and their experience of either considering an appeal or their experience of having taken an appeal to SENDIST.

The survey was sent to 215 parents who had contacted SENAC in relation to appeals. It was also sent to community representatives and networks with a request to forward to their parent service users and members.

163 responses were received 116 (71%) of whom recorded that they had taken an appeal to SENDIST and 46 (29%) recorded that they had not taken an appeal to SENDIST. One person did not respond to this question. Only three people indicated that they had withdrawn their appeal and, they recorded that they had done so, because *'they were worn out by the process.'*

PARENTS OPTING NOT TO APPEAL AFTER CONSIDERATION

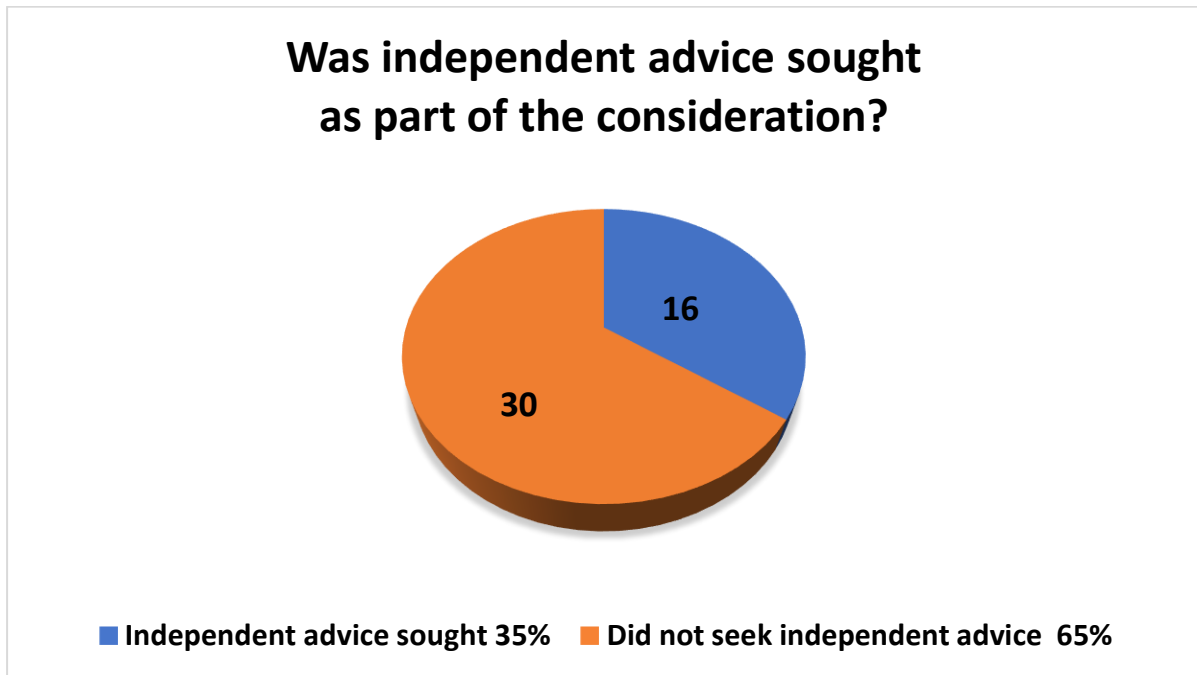
TABLE 2.1



The 'Other' category included:

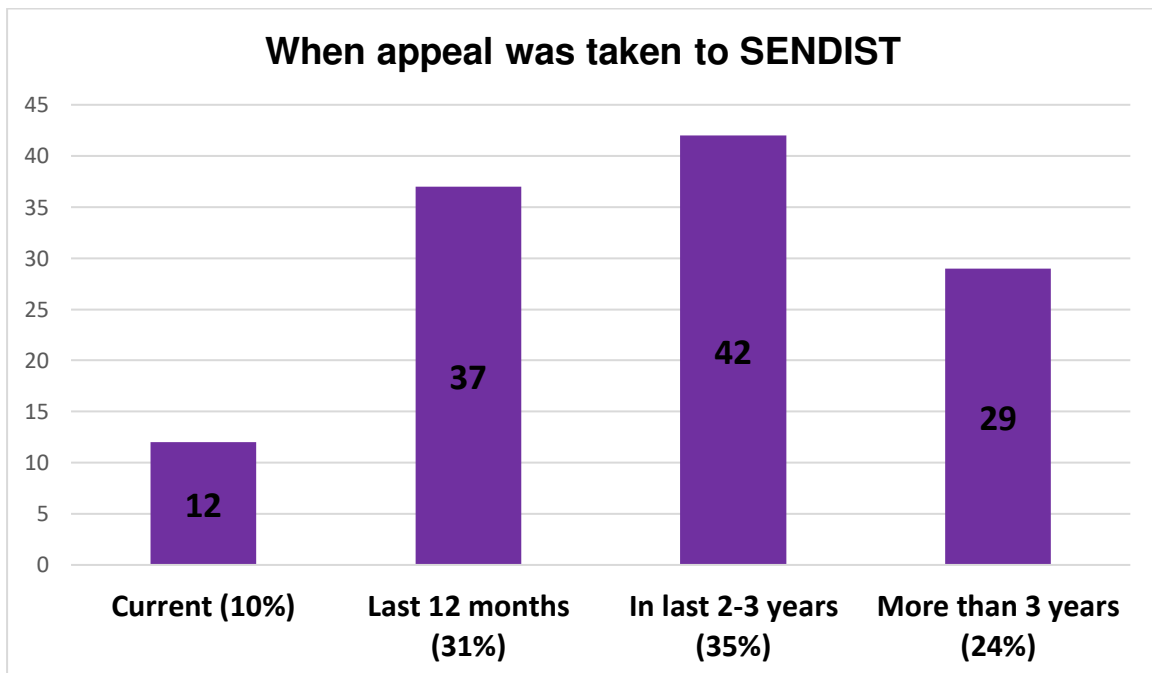
- Parent took legal advice
- Contacted their MLA
- Example of explanations received *'We were a week away from Tribunal and our legal team advised us to withdraw as the school and the EA were bringing an entourage of people and it was going to be too intimidating for us as parents.'* (Parent)
'I was given a number of promises of Stage 3 support that turned out to be false.' (Parent)

TABLE 2.2



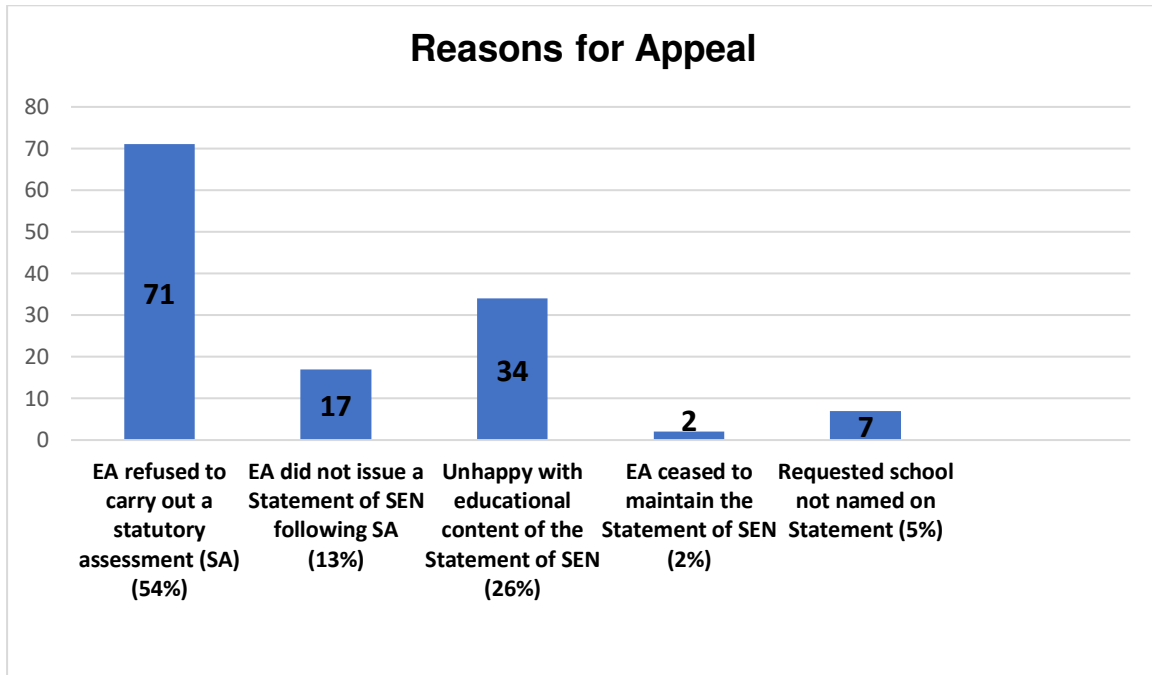
PARENTS WHO APPEALED

TABLE 2.3



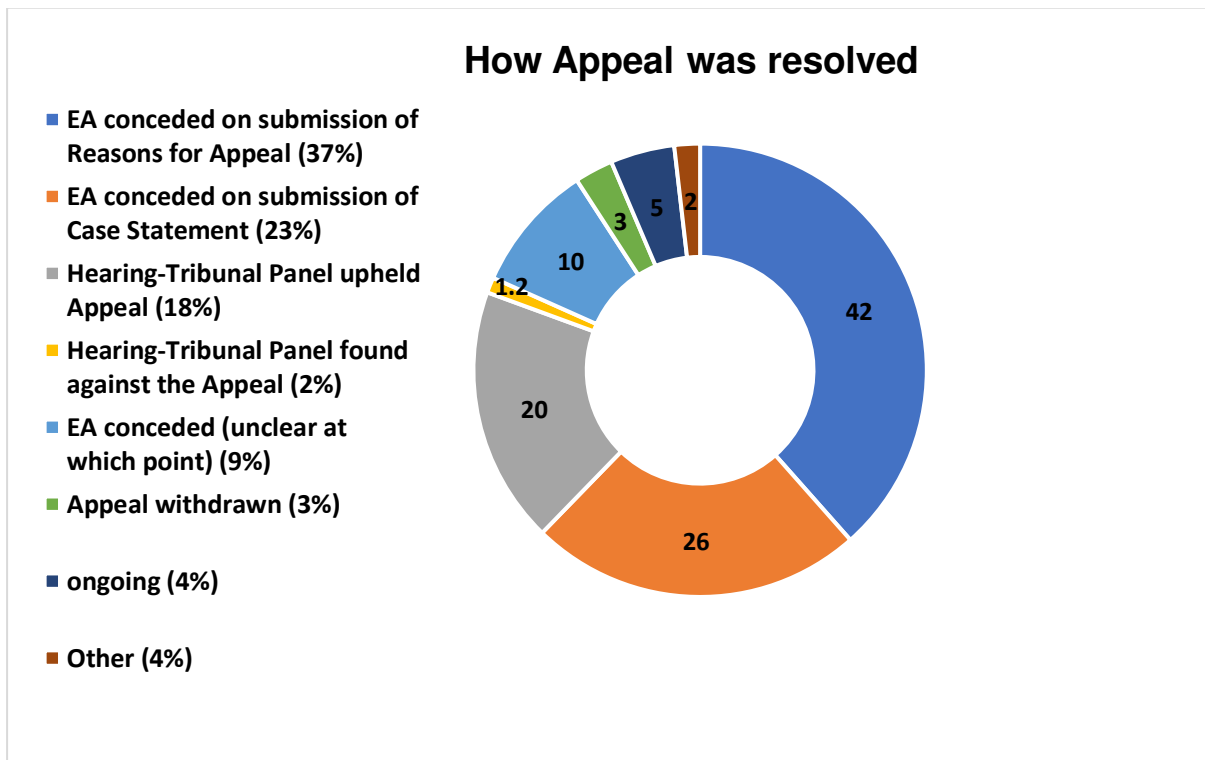
Response rate to this question was 74%.

TABLE 2.4



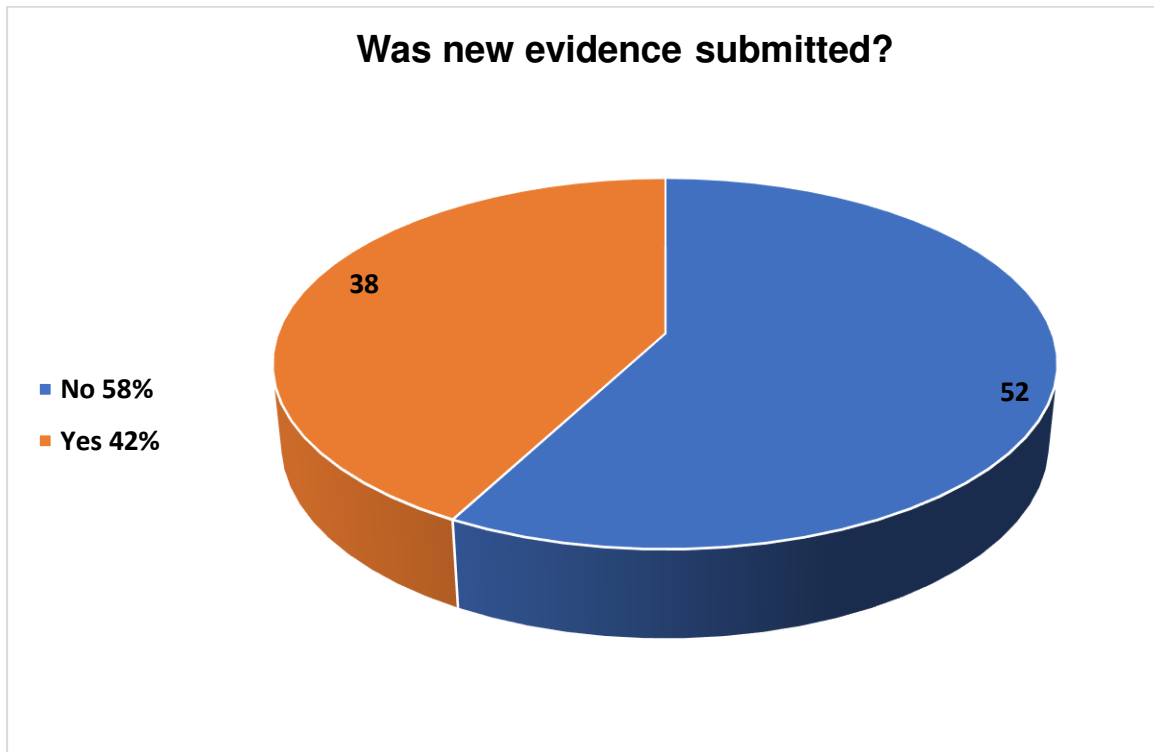
Response rate to this question was 80%.

TABLE 2.5



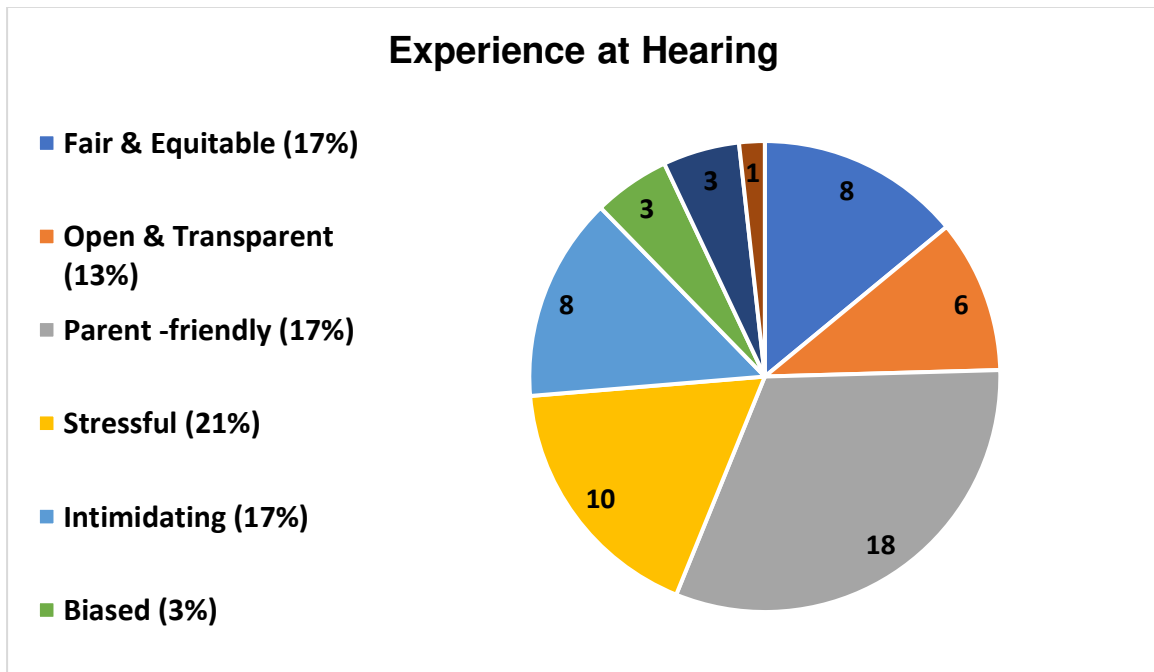
Response rate to this question was 69%.

TABLE 2.6



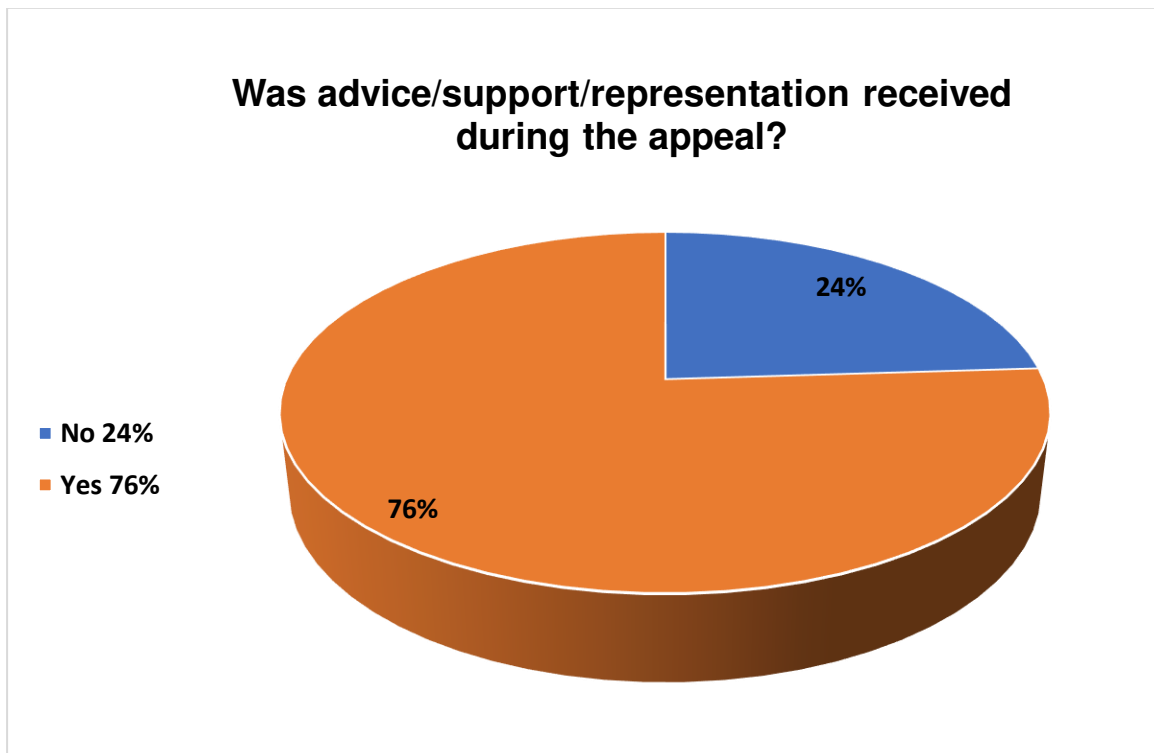
Response rate to this question was 55%

Table 2.7



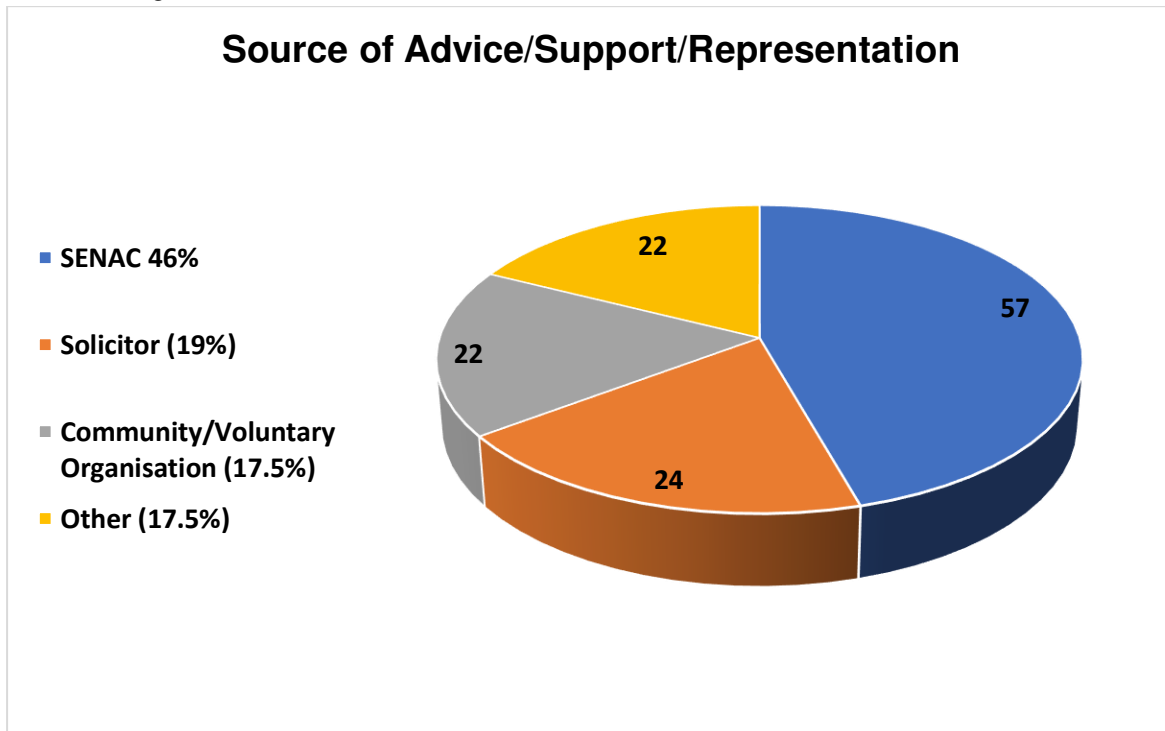
Response rate to this question was 12%

Table 2.8



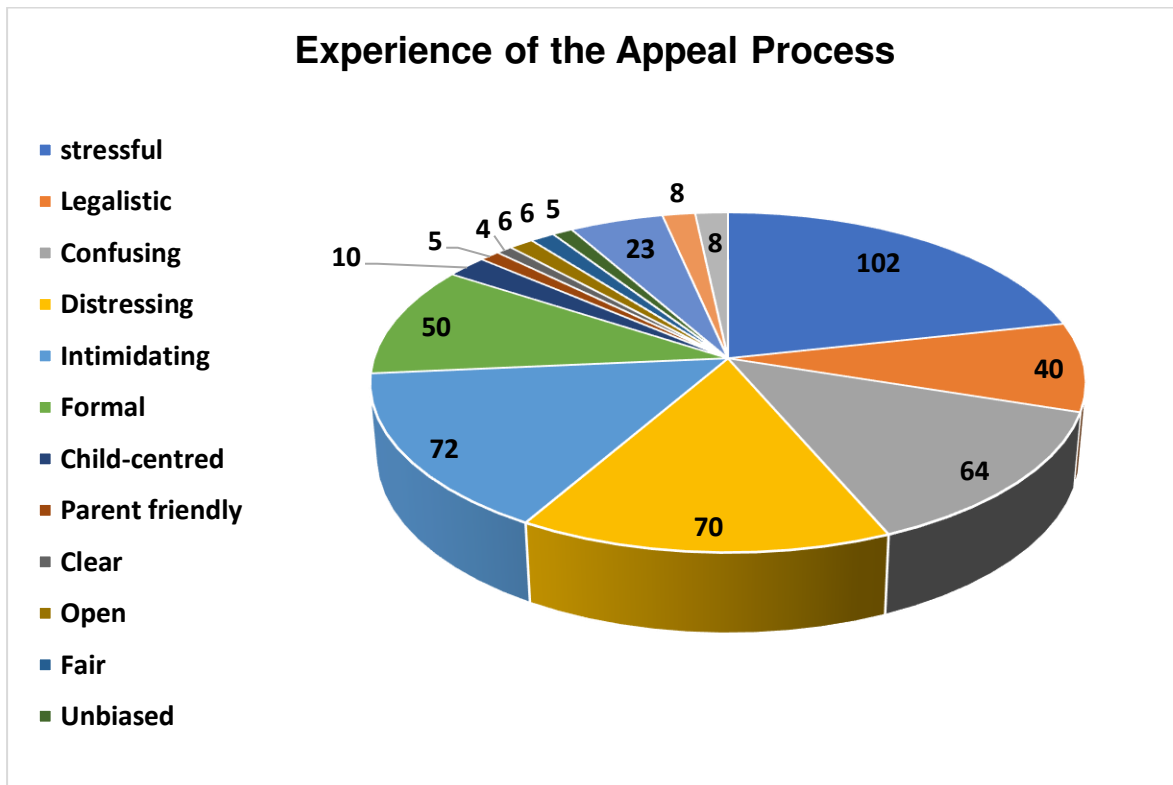
Response rate to this question was 67%

TABLE 2.9



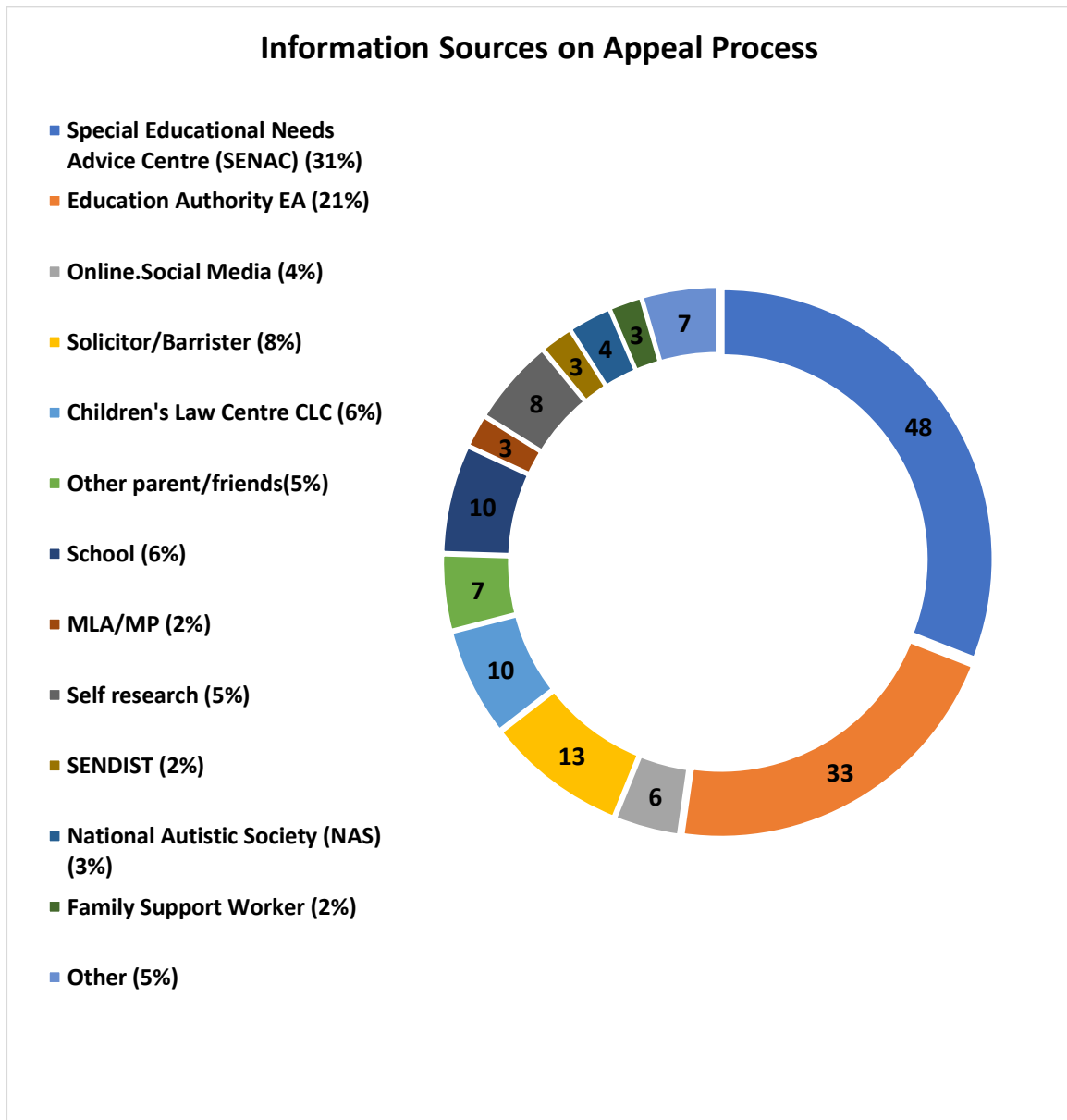
The 'other' category included Psychologist, School Principal, Children's Law Centre, DARS.
Response rate to this question was 52%

TABLE 2.10



Response rate to this question was 67%

TABLE 2.11



Response rate to this question was 95%

The responses in the 'Other' category included the Educational Psychologist, NICCY, Autism NI, RNIB. Average rating on the information received was 3 stars out of a possible five.