

Report of Chief Officer (Partnership, Development & Business Support) Children's Services

Report to Deputy Director, Safeguarding, Specialist & Targeted Services



Date: September 2014

Subject: To waive the requirement of the Contracts Procedure Rule(s) in order to enter into a short term contract with Community Accord, in respect of SEN & Disability related disagreement resolution and mediation services, as stipulated by the Children & Families Act 2014.

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

This report seeks the approval of the Deputy Director, Safeguarding, Specialist & Targeted Services in waiving the requirements of the Council's Contracts Procedure Rules (CPR's) in respect of entering into a temporary and new contract with Community Accord in relation to the Children & Families Act 2014.

The Children & Families Act 2014 requires that all local authorities make provision for the access of children, young people and parents to independent disagreement resolution and or mediation services. This requirement relates to those children and young people who have special educational needs and disabilities (SEN & D).

The Act requires, where relevant, that young people are worked with in order to develop an Education, Health & Care (EHC) plan, very simply, where disagreements arise in relation to the content of that plan, or in respect of a perceived failure (perceived by children, young people and their parents) to undertake an EHC plan. The Act requires that the plan is put together at an early stage (the point of transfer from an early years setting to a formal educational setting if possible) where feasible, and constitutes a joint undertaking involving children / young people, parents, and education, health and social care representatives (see information attached at appendix 1).

The Act further requires that the disagreement resolution and mediation service is put in place from 01.09.14. The legislation itself passed through parliament, finally, in July 2014, coming into force from 01.09.14, allowing little time to facilitate a full and formal commissioning process.

The Commissioning & Market Management team undertook a brief market sounding exercise, with support from the SEN team, and identified three potential providers of this new service. All the identified providers have relevant qualifications, experience and expertise in undertaking disagreement resolution and mediation processes. Nevertheless, it should be understood that disagreement resolution and mediation in this context is new. Such services have been utilised in the past, within Children Services, where disputes have arisen involving disagreements in relation to the educational provision mapped out for children and young people with SEN & D issues. However, this has been on an ad hoc basis, and as indicated the EHC plan process is a new one, requiring as it does the active involvement of children / young people, parents, education, health and social care.

Recommendations

The Deputy Director, Safeguarding, Specialist & Targeted Services is recommended to approve the waiver of CPR's 8.1 & 8.2, in order to enter into a new contract with the Community Accord organisation to deliver services on behalf of LCC, Children Services. It is proposed that the contract awarded for the period running from 01.09.14 up to 31.03.15, with an option to extend the contract for a further 3 months should this be required, without recourse to competition.

It is further proposed that during the period up to 31.03.15, a formal competitive commissioning process is undertaken to facilitate the identification of a new service provider from 01.04.15, at the earliest, and by 01.07.15 at the latest (should the formal process be delayed for any reason).

1 Purpose of this report

1.1 The report seeks a waiver to CPR's 8.1 and 8.2 in respect of services for children, young people and families to be delivered by Community Accord. The proposed Community Accord contract is valued at £10, 000 for the period running from 01.09.14 to 31.03.15. If the extension period of three months is, for any reason, required, this would equate to a further value of £5000.

1.2 CPR 8 states that;

8.1 Where no appropriate ISP, Exclusive Supplier, existing provider, or Approved Framework Agreement exists, competition is required for procurements valued over £10k but at or below £100k.

8.2 At least **three** written tenders will be invited.

8.3 Any decision to waive this rule by a Chief Officer will be in accordance with CPR27.

8.4 Regardless of the procurement method used, the Delegated Decision to undertake a procurement of this value will generally be an Administrative Decision unless the decision maker considers that it will have a significant impact. This is just general guidance and officers should have regard to the Council's Constitution when deciding which kind of Delegated Decision applies.

2 Background information

2.1 The need to establish a disagreement resolution and mediation service arises from the requirements of the Children & Families Act 2014.

2.2 The Children and Families Act 2014 provides the opportunity for parents and young people to go to mediation before they can register an appeal with the First-tier Tribunal (Special Educational Needs and Disability) ("the Tribunal"). Children and parents and young people will also be able to go to mediation about the health and social care elements of an Education, Health and Care (EHC) plan. The new mediation arrangements reflect a wider movement across government to promote early resolution of disputes through non-judicial means.

2.3 EHC assessments and EHC plans will be progressively replacing the current system of assessments and SEN statements and Learning Difficulty Assessments (LDAs) from 1 September 2014. From 1 September, local authorities and health commissioning bodies, where relevant, will have to make mediation arrangements available to parents and young people who are subject to the new EHC needs assessment and EHC plan system – the new mediation arrangements will not apply to those who still have SEN statements or LDAs.

2.4 The duty on local authorities to make disagreement resolution services available is retained under the Children and Families Act and, in a reflection of the rest of the SEN and disabilities part of the Act they will have to be made available to young people as well as parents. Disagreement resolution arrangements are also being widened to

cover disagreements about the health and social care elements of EHC plans and also disagreements between local authorities and health commissioning bodies during EHC needs assessments or reassessments, the drawing up of EHC plans or reviews of the plans.

- 2.5 Mediation arrangements under the Children and Families Act are different from the disagreement resolution arrangements. Other than disagreements between local authorities and health commissioning groups, disagreement resolution arrangements are available to be used at any time whereas the mediation arrangements will only be available when decisions are made about which parents and young people will be able to appeal to the Tribunal, or, in the case of the health and social care elements of EHC plans which cannot be appealed to the Tribunal, when a plan is made, amended or replaced. Use of the disagreement resolution arrangements is voluntary for both parties to the dispute whereas if parents or young people want to go to mediation then the local authority and/or the relevant health commissioning body or bodies must attend.
- 2.6 Local authorities will, by 1 September 2014, have to have made arrangements so that parents and young people will be able to receive information about mediation and to go to mediation. How local authorities make these arrangements is a matter for them.
- 2.7 Whatever arrangements are made, no one who provides mediation information or conducts mediation sessions can be directly employed by a local authority in England. People from voluntary organisations who are contracted by local authorities to provide their parent partnership service or mediators who are already contracted by local authorities to provide disagreement resolution services can act as mediation advisers or as mediators. Mediators must have sufficient knowledge of special educational needs, health and social care legislation in order to conduct mediation. The new SEN Code of Practice will advise that people who are contracted to act as mediators should have received accredited mediation training.
- 2.8 The Children and Families Act 2014 sets out a process for giving parents and young people information about mediation and going to mediation if they wish to. Local authorities will play the key role in making the process work – health commissioning bodies will be responsible for arranging mediation where the parent or young person only wants to go to mediation about the health element of EHC plans.
- 2.9 Parents and young people will have the right to appeal to the Tribunal about local authority decisions:
 - Not to secure an EHC needs assessment for a child or young person;
 - Not to draw up an EHC plan following an EHC needs assessment;
 - Where an EHC plan has been drawn up
 - The description of the child's or young person's special educational needs as specified in the plan;
 - The special educational provision specified in the plan;
 - The school or other institution specified in the plan, or the type of school or other institution specified in the plan;
 - The fact that no school or other institution is named in the plan.

- Not to secure a reassessment;
- Not to amend or replace an EHC plan following a review or reassessment;
- To cease to maintain an EHC plan.

2.10 When sending a notice to a parent or young person either conveying one of the decisions set out above, or when sending a final plan or amended plan to a parent or young person, the local authority **must** inform the parent or young person of:

- Where the local authority is sending a final EHC plan or amended plan, their right to mediation about the education, health and social care elements of the plan;
- The requirement to obtain a certificate either following the receipt of information about mediation or following mediation before they can register an appeal with the Tribunal;
- The contact details of a mediation adviser from whom the parent or young person can obtain that certificate;
- The timescales for requesting mediation (two months from the date of the notice);
- The requirement to inform the local authority –
 - (i) if the parent or young person wishes to pursue mediation;
 - (ii) what they want to pursue mediation about (the mediation “issues”); and
 - (iii) if that includes the fact that no health care provision, or no health care provision of a particular kind, is specified in the EHC plan, the health care provision that the child’s parent or young person wishes to be specified in the EHC plan; and
- The contact details for any person acting on behalf of the local authority whom the child’s parent or young person should contact if they wish to pursue mediation.

2.11 The notice should point out that parents and young people do not have to contact the mediation adviser if they only want to appeal to the Tribunal about the school or other institution named in the plan, the type of school or other institution specified in the plan, or the fact that the plan does not name a school or other institution. The notice should also make clear that going to mediation does not affect the right, subsequently, to appeal to the Tribunal.

2.12 If the parent or young person contacts a person acting on behalf of the local authority, as referred to in the last bullet in the previous paragraph, that person should take down details of what the parent or young person wants to go to mediation about.

2.13 If that includes health care issues the local authority **must**, within three working days, inform each relevant health commissioning body of what the parent or young person wants to go to mediation about and the health care provision the parent or young person wants to be specified in the plan.

2.14 Where the parent or young person only wishes to pursue mediation about the health care elements of the plan then it is for the relevant health commissioning body (or if there is more than one, the relevant health commissioning bodies) to arrange the mediation. The local authority does not have to do anything further in this instance, other than to inform the health commissioning body or bodies.

- 2.15 Any mediation which involves health care issues and either or both of the education and social care aspects of EHC plans will be arranged by the local authority.
- 2.16 If the parent or young person has contacted the mediation adviser detailed in the notice and informed the mediation adviser that they do not want to go to mediation about the matters which can be appealed to the Tribunal then the mediation adviser will issue a certificate to the parent or young person within three working days and the parent or young person can register an appeal with the Tribunal.
- 2.17 In this case there is nothing further for the local, authority to do, other than respond to any Tribunal appeal in due course or take part in mediation if the parent or young person has said that they want to go mediation about the social care part of the plan or the social and health care part of the plan.
- 2.18 If the parent or young person informs the local authority that they want to go to mediation about a matter which can be appealed to the Tribunal and they have not contacted the mediation adviser then they should be pointed to the mediation adviser, whose contact details are given in the notice to the parent or young person.
- 2.19 Mediation advisers may not issue a certificate to the parent or young person if the parent or young person has not contacted the mediation adviser within 2 months of the local authority's notice referred to above (2.10). Local authorities should be aware that the Tribunal will have the discretionary power to allow an appeal even where the mediation adviser has not issued a certificate within two months.
- 2.20 Where the parent or young person informs the local authority that they want to go to mediation about one of the matters which they can appeal to the Tribunal about and/or the social care element of the plan, whether they want to go to mediation about the health care element of the plan or not, the local authority **must** arrange mediation for the parent or young person within 30 days.
- 2.21 Local authorities may wish to delegate making the arrangements for the mediation to the mediation company or companies or others who they have contracted to provide mediation for them.
- 2.22 Where the parent or young person wants to go to mediation and the local authority is unable to arrange mediation within 30 days the local authority **must** inform the mediation adviser as soon as possible after it realises it will not be able to arrange mediation in that period. The mediation adviser will, within three working days, then issue the parent or young person with a certificate with which the parent or young person can register an appeal at the Tribunal if one or more of the mediation issues are matters which can be appealed to the Tribunal. Alternatively the parent or young person can wait until mediation is arranged.
- 2.23 The purpose of the late changes to the Children and Families Bill in respect of disagreement resolution and mediation was to provide a mechanism for disagreements about the education, health and care elements of an EHC plan to be considered together.

- 2.24 Where parents and young people have disagreements about two or all three of these elements and want to go to mediation about them then one mediation should cover all areas of disagreement. So, for example, if the parent or young person contacts the person acting on behalf of the local authority saying they want to go to mediation about all three elements of an EHC plan the local authority should delay arranging mediation until after the parent or young person has contacted the mediation adviser to see whether they still want to go to mediation about the SEN element of the plan so that all elements can be dealt with at one mediation. This will avoid there being separate mediations for the SEN element and the health and social care elements.
- 2.25 The local authority **must** inform the parent or young person of the date and place of the mediation at least 5 working days prior to the mediation unless the parent or young person consents to this time period being reduced.
- 2.25 Where mediation has been arranged in relation to a matter which can be appealed to the Tribunal and/or about the social care element of an EHC plan the local authority **must** attend the mediation. Where the mediation also covers the health care element of the plan the responsible health commissioning body or bodies must also attend. The local authority **must** ensure that the person or persons who attend on its behalf have the authority to resolve the mediation issues.
- 2.26 In addition to the parent or young person and the person or persons from the local authority other people may attend the mediation. The parent or young person may be accompanied by an advocate or other supporter. Where a child's parent is a party to the mediation the child may attend with the agreement of the parent and the mediator; and any other person may attend where there is agreement of all parties to the mediation, or where there is no agreement, with the consent of the mediator.
- 2.26 In order to facilitate attendance at mediation the local authority, where it arranges the mediation, **must** pay the following expenses where it has agreed to do so before the mediation and following the receipt of satisfactory supporting evidence of the expenses claimed:

Travel Costs	Standard class public transport fares for the parent and their child or the young person.
	A mileage rate of 25p per mile for travel by car or motorcycle.
	Taxi fares.
Repayment for loss of earnings.	Loss of earnings up to £45.
Registered child or young person care expenses	Engagement of a registered child or adult carer at £5.35 per hour, per child or young person.
Overnight expenses	Expenses up to £71 per night for, or £21 per night if the stay is with family or friends.

Local authorities **must not** unreasonably refuse the payment of expenses to parents and young people.

- 2.27 When mediation has been completed and the mediation issues have included matters which can be appealed to the Tribunal the mediator will issue a certificate within three working days to the parent or young person.
- 2.28 If there has been no resolution of the disagreement over these matters then the parent or young person can register an appeal with the Tribunal.
- 2.29 If the mediation issues have included the social care element of an EHC plan then the parent or young person has the option of making a formal complaint under the 'Local Authority Complaints Procedure' if they have not already done so and, if they think the local authority has treated them unfairly as a result of bad or inefficient management, they can refer the complaint to the Local Government Ombudsman.
- 2.30 Similarly, if the mediation issues have included the health care element of EHC plan and there has been no resolution at mediation with the relevant health commissioner(s) the parent or young person can make use of the NHS complaints arrangements if they have not already done so and, if they are dissatisfied with the way that the NHS has dealt with their complaint, to the Parliamentary and Health Service Ombudsman.
- 2.31 Where there has been either full or partial agreement between the local authority and/or the health commissioner(s) and the parent or young person at mediation, a mediation agreement **must** be recorded in writing. Where agreement has been reached to do something in relation to the social care element of the EHC plan the local authority **must** do that thing within two weeks of the mediation agreement.
- 2.32 Where the mediation agreement requires the local authority to do something in relation to a matter which can be appealed to the Tribunal the local authority **must** do that within the following time scales:

if the agreement is to cease to maintain an EHC plan the local authority will cease the plan immediately;

if the agreement is to make an assessment or reassessment, the local authority shall within 2 weeks notify the parent or the young person that it shall make the assessment or reassessment and shall:

- (i) Where, following the assessment or reassessment, the local authority decides that it is not necessary for special educational provision to be made for the child or young person, in accordance with an EHC plan, notify the child's parent or the young person its decision, giving reasons for it, as soon as practicable, and in any event within 10 weeks of the mediation agreement;
- (ii) Where, following the assessment or reassessment, it decides that it is necessary for the special educational provision to be made for the child or the young person, in accordance with an EHC plan, it must send the finalised plan to the child's parent or to the young person, the governing body, proprietor or principal of any school, other institution or

provider of other relevant early years education named in the EHC plan and to the responsible health commissioning body as soon as practicable and in any event within 14 weeks of the mediation agreement;

- 2.33 If the agreement is that the local authority will make and maintain an EHC plan the authority shall:
- (i) Issue a draft EHC plan within 5 weeks of the mediation agreement;
 - (ii) Send a copy of the finalised EHC plan to the child's parent or young person within 11 weeks of the mediation agreement;
- 2.34 If the agreement is to amend the special educational provision specified in an EHC plan, the local authority shall issue the amended plan within 5 weeks of the mediation agreement;
- 2.35 If the agreement is to amend the name of the school or other institution or type of school or other institution specified in the EHC plan, the local authority shall issue the amended EHC plan within 2 weeks of the mediation agreement;
- 2.36 If the agreement is to continue to maintain the EHC plan in its existing form the local authority shall continue to maintain the plan; and
- 2.37 If the agreement is to continue and amend the EHC plan the local authority shall continue to maintain the plan and amend the EHC plan within 5 weeks of the mediation agreement.

3 Main issues

Reason for Contracts Procedure Rules Waiver / Invocation

- 3.1 The Directorate of Children Services wishes to enter into a new contract with the provider in order to facilitate the right of children / young people and parents to disagreement resolution and or mediation services as required by the Children & Families Act 2014.
- 3.2 It is proposed that a temporary arrangement be put in place from September 2014 until 31.03.14, in order to facilitate this service, and because time frames have not enabled a full and formal commissioning process.
- 3.3 It is further proposed that whilst the temporary contract is in place, the Commissioning & Market Management team undertake a formal commissioning process, with the aim of putting the service in place from 01.04.15 (with the possibility of a three month extension to the temporary arrangement should there be any delay in completing this process).

Consequences if the proposed action is not approved

- 3.6 Risks have been identified if a decision is not taken on this arrangement continuing, namely that the Local Authority will be in breach of the requirements of the Children &

Families Act 2014 in respect of disagreement resolution and mediation services, and, therefore, will be acting unlawfully

Advertising

- 3.7 The contract has not been advertised through the OJEU open market process for the reasons outlined in section 3.2.

4. Corporate Considerations

Consultation and Engagement

- 4.1 The current service provider has been informed of the intention to award a future contract.
- 4.2 Discussions have taken place involving senior officers of the Directorate, SEN team colleagues, and the proposed provider to confirm the proposed specification and contract arrangement for service delivery.

Equality and Diversity / Cohesion and Integration

- 4.3 The award of a new and temporary contract to the proposed service provider means that SEN & D clients will be able to access this new service whose aim is to secure non-judicial ways of dispute resolution. The proposed service will, in fact, enhance the provision of service to SEN & D children / young people and parents enabling their active participation in decisions affecting their lives. (EDCI Screening form attached)

Council Policies and City Priorities

- 4.4 The contract will deliver against the priorities set out in the Children and Young People's Plan:

Ensure that the most vulnerable are protected

Improve support where there are additional health needs

Increase participation, voice and influence

Support families so that they are better able to support their children.

Actively promote the health and well-being of children, young people and their parents

Resources and Value for Money

- 4.5 Discussions with potential providers yielded the following costs;

The providers and cost per case are as follows;

a) Resolvability based in Shropshire

£719 Plus up to £550 expense charge for admin support, mileage, sustenance, taxis

b) Community Accord based in Bradford

£750 retainer for six months to 31st March 2015 + £680 per case + mileage only expenses at 50 pence per hour

c) Chapel Mediation & Consultancy Ltd based in County Durham

Charges capped at £500 per case (except in very complex and rare cases) + mileage only expenses at 45 pence per hour

4.6 Please note costs will be pro-rata where a disagreement resolution or mediation is completed before a joint meeting.

Not included

- Arranging and cost of interpreters, advocates, and reasonable adjustments.
- Refunding costs that P/YP incurred to attend mediation.
- Arranging and cost of venue

4.7 The view of the Commissioning team is that the costs outlined by Community Accord represent reasonable value for money, are relatively locally based and have worked with Children Services previously.

4.8 The provider will be asked to submit a delivery plan which will be reviewed and negotiated to ensure value for money in service delivery and appropriate performance measures are in place to evaluate delivery.

4.9 Bearing in mind the relatively unknown nature of the demands that will be based upon this proposed contract a cost of £10, 000 is estimated for the period from September to the end of March 2015. Previous experience suggests that there could be up to 10 or so cases per annum, with an additional 2/3 cases via Health.

4.10 Health colleagues (CCG's) have been asked if they would wish to utilise this provision and in principal have agreed. On this basis a contribution of £3, 000 will be requested, providing a total budget of £13, 000.

4.11 Nevertheless, it is stressed that this is a relatively new area of work; as such the costs provided are estimates.

Legal Implications, Access to Information and Call In

4.12 The decision to waive CPRs is an administrative decision under CPR 27.2; therefore, this report will be published but is not subject to call-in.

4.13 Awarding the contract to this provider without competition could leave the Council open to a potential claim from other providers, to whom this contract could be of interest, that it has not been wholly transparent. In terms of transparency it should be noted that Contracts Procedure Rules suggests that contracts of this value should be subject to a degree of advertising. It is up to the Council to decide what degree of advertising is appropriate. In giving the work to this provider without competition there is a potential risk of challenge from other providers who have not been given the chance to tender for this opportunity.

4.14 Whilst there is no legal obstacle preventing the waiver of CPR 8.1 and 8.2, the above comments should be noted when making the final decision, the Director of Children's

Services should be satisfied that the course of action chosen represents Best Value for the Council.

Risk Management

- 4.15 The project team has identified any risks and actions to mitigate these as part of the commissioning programme plan for the service.
- 4.16 Risk of challenge from other providers due to the lack of opportunity to tender for this service. In order to mitigate this risk, providers will be made aware of the future plans for tendering services and the opportunities this will present as well as their opportunities to contribute to the shaping of the services during consultations.
- 4.17 In the event this waiver to award the new contract is not approved, LCC duties will remain and therefore alternative delivery arrangements will need to be put in place. This would prove very difficult given constraints of time.

5 Conclusions

- 5.1 The Deputy Director, Safeguarding, Specialist & Targeted Services is requested to note the contents of this report and approve the waiver of contracts procedure rules 8.1 and 8.2 to enter into a new contract with Community Accord for the provision of disagreement resolution and mediation services as required by the Children & Families Act, 2014.

6 Recommendations

- 6.1 The Deputy Director, Safeguarding, Specialist & Targeted Services is recommended to approve the waiver of CPR's 8.1 & 8.2, in order to enter into a new contract with the Community Accord organisation to deliver services on behalf of LCC, Children Services. That the contract, in favour of Community Accord, is awarded from September 2014 up to 31.03.15, with the option to extend for three months if required, without recourse to competition.
- 6.2 It is further proposed that during the period up to 31.03.15, a formal competitive commissioning process is undertaken to facilitate the identification of a new service provider from 01.04.15, at the earliest, and by 01.07.15 at the latest (should the formal process be delayed for any reason).

7 Background documents¹

- 7.1 None

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.

Appendix 1

Excerpt from the Children & Families Act, 2014

Part 3

Appeals, mediation and dispute resolution

(1) A child's parent or a young person may appeal to the First-tier Tribunal against the matters set out in subsection (2), subject to section 55 (mediation).

(2) The matters are—

(a) a decision of a local authority not to secure an EHC needs assessment for the child or young person;

(b) a decision of a local authority, following an EHC needs assessment, that it is not necessary for special educational provision to be made for the child or young person in accordance with an EHC plan;

(c) where an EHC plan is maintained for the child or young person—

(i) the child's or young person's special educational needs as specified in the plan;

(ii) the special educational provision specified in the plan;

(iii) the school or other institution named in the plan, or the type of school or other institution specified in the plan;

(iv) if no school or other institution is named in the plan, that fact;

(d) a decision of a local authority not to secure a re-assessment of the needs of the child or young person under section 44 following a request to do so;

(e) a decision of a local authority not to secure the amendment or replacement of an EHC plan it maintains for the child or young person following a review or re-assessment under section 44;

(f) a decision of a local authority under section 45 to cease to maintain an EHC plan for the child or young person.

(3) A child's parent or a young person may appeal to the First-tier Tribunal under subsection (2)

(c)—

(a) when an EHC plan is first finalised for the child or young person, and

(b) following an amendment or replacement of the plan.

(4) Regulations may make provision about appeals to the First-tier Tribunal in respect of EHC needs assessments and EHC plans, in particular about—

(a) other matters relating to EHC plans against which appeals may be brought;

(b) making and determining appeals;

(c) the powers of the First-tier Tribunal on determining an appeal;

(d) unopposed appeals.

(5) Regulations under subsection (4)(c) may include provision conferring power on the First-tier Tribunal, on determining an appeal against a matter, to make recommendations in respect of other matters (including matters against which no appeal may be brought).

(6) A person commits an offence if without reasonable excuse that person fails to comply with any requirement—

(a) in respect of the discovery or inspection of documents, or

(b) to attend to give evidence and produce documents,

where that requirement is imposed by Tribunal Procedure Rules in relation to an appeal under this section or regulations under subsection (4)(a).

(7) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

52 Right to mediation

(1) This section applies where—

(a) a decision against which an appeal may be brought under section 51 is made in respect of a child or young person, or

(b) an EHC plan for a child or young person is made, amended or replaced.

(2) Before the end of the prescribed period after the decision is made, or the plan is made, amended or replaced, the local authority must notify the child's parent or the young person of—

(a) the right to mediation under section 53 or 54, and

(b) the requirement to obtain a certificate under section 55 before making certain appeals.

(3) If the parent or young person wishes to pursue mediation under section 53 or 54, he or she must inform the local authority of—

(a) that fact, and

(b) the issues in respect of which he or she wishes to pursue mediation (“the mediation issues”).

(4) If the mediation issues are, or include, the fact that no health care provision, or no health care provision of a particular kind, is specified in the plan, the parent or young person must also inform the local authority of the health care provision which he or she wishes to be specified in the plan.

53 Mediation: health care issues

(1) This section applies where—

(a) the parent or young person informs the local authority under section 52 that he or she wishes to pursue mediation, and

(b) the mediation issues include health care provision specified in the plan or the fact that no health care provision, or no health care provision of a particular kind, is specified in the plan.

(2) The local authority must notify each relevant commissioning body of—

(a) the mediation issues, and

(b) anything of which it has been informed by the parent or young person under section 52(4).

(3) If the mediation issues are limited to the health care provision specified in the plan or the fact that no health care provision, or no health care provision of a particular kind, is specified in the plan, the responsible commissioning body (or, where there is more than one, the responsible commissioning bodies acting jointly) must—

(a) arrange for mediation between it (or them) and the parent or young person,

(b) ensure that the mediation is conducted by an independent person, and

(c) participate in the mediation.

(4) If the mediation issues include anything else—

(a) the local authority must—

(i) arrange for mediation between it, each responsible commissioning body and the parent or young person,

(ii) ensure that the mediation is conducted by an independent person, and

(iii) participate in the mediation, and

(b) each responsible commissioning body must also participate in the mediation.

(5) For the purposes of this section, a person is not independent if he or she is employed by any of the following—

(a) a local authority in England;

(b) a clinical commissioning group;

(c) the National Health Service Commissioning Board.

(6) In this section “responsible commissioning body”—

(a) if the mediation issues in question are or include the health care provision specified in an EHC plan, means a body that is under a duty to arrange health care provision of that kind in respect of the child or young person;

(b) if the mediation issues in question are or include the fact that no health care provision, or no health care provision of a particular kind, is specified in an EHC plan, means a body that would be under a duty to arrange health care provision of the kind in question if it were specified in the plan.

54 Mediation: educational and social care issues etc

(1) This section applies where—

(a) the parent or young person informs the local authority under section 52 that he or she wishes to pursue mediation, and

(b) the mediation issues do not include health care provision specified in the plan or the fact that no health care provision, or no health care provision of a particular kind, is specified in the plan.

(2) The local authority must—

(a) arrange for mediation between it and the parent or young person,

(b) ensure that the mediation is conducted by an independent person, and

(c) participate in the mediation.

(3) For the purposes of this section, a person is not independent if he or she is employed by a local authority in England.

55 Mediation

(1) This section applies where a child's parent or young person intends to appeal to the First-tier Tribunal under section 51 or regulations made under that section in respect of—

(a) a decision of a local authority, or

(b) the content of an EHC plan maintained by a local authority.

(2) But this section does not apply in respect of an appeal concerning only—

(a) the school or other institution named in an EHC plan;

(b) the type of school or other institution specified in an EHC plan;

(c) the fact that an EHC plan does not name a school or other institution.

(3) The parent or young person may make the appeal only if a mediation adviser has issued a certificate to him or her under subsection (4) or (5).

(4) A mediation adviser must issue a certificate under this subsection to the parent or young person if—

(a) the adviser has provided him or her with information and advice about pursuing mediation under section 53 or 54, and

(b) the parent or young person has informed the adviser that he or she does not wish to pursue mediation.

(5) A mediation adviser must issue a certificate under this subsection to the parent or young person if the adviser has provided him or her with information and advice about pursuing mediation under section 53 or 54, and the parent or young person has—

(a) informed the adviser that he or she wishes to pursue mediation under the appropriate section, and

(b) participated in such mediation.

56 Mediation: supplementary

(1) Regulations may make provision for the purposes of sections 52 to 55, in particular—

(a) about giving notice;

(b) imposing time limits;

(c) enabling a local authority or commissioning body to take prescribed steps following the conclusion of mediation;

(d) about who may attend mediation;

(e) where a child's parent is a party to mediation, requiring the mediator to take reasonable steps to ascertain the views of the child;

(f) about the provision of advocacy and other support services for the parent or young person;

(g) requiring a local authority or commissioning body to pay reasonable travel expenses and other expenses of a prescribed description, up to any prescribed limit;

(h) about exceptions to the requirement in section 55(3);

(i) about the training, qualifications and experience of mediators and mediation advisers;

(j) conferring powers or imposing requirements on local authorities, commissioning bodies, mediators and mediation advisers.

(2) In section 55 and this section “mediation adviser” means an independent person who can provide information and advice about pursuing mediation.

(3) For the purposes of subsection (2), a person is not independent if he or she is employed by any of the following—

(a) a local authority in England;

(b) a clinical commissioning group;

(c) the National Health Service Commissioning Board.

(4) In this section “commissioning body” means a body that is under a duty to arrange health care provision of any kind.

57 Resolution of disagreements

(1) A local authority in England must make arrangements with a view to avoiding or resolving disagreements within subsection (2) or (3).

(2) The disagreements within this subsection are those about the exercise by the local authority or relevant bodies of their functions under this Part, where the disagreement is between—

(a) the local authority or a relevant body, and

(b) the parents of children, and young people, in the authority's area.

(3) The disagreements within this subsection are those about the exercise by the local authority of its functions relating to EHC needs assessments, the preparation and review of EHC plans, and re-assessment of educational, health care and social care needs, where the disagreement is between—

(a) the local authority and a responsible commissioning body, or

(b) a responsible commissioning body and the parents of children, or young people, in the authority's area.

(4) A local authority in England must make arrangements with a view to avoiding or resolving, in each relevant school or post-16 institution, disagreements within subsection (5).

(5) The disagreements within this subsection are those about the special educational provision made for a child or young person with special educational needs who is a registered pupil or a student at the relevant school or post-16 institution concerned, where the disagreement is between—

(a) the child's parent, or the young person, and

(b) the appropriate authority for the school or post-16 institution.

(6) Arrangements within this section must provide for the appointment of independent persons with the function of facilitating the avoidance or resolution of the disagreements to which the arrangements apply.

(7) For the purposes of subsection (6) a person is not independent if he or she is employed by any of the following—

(a) a local authority in England;

(b) a clinical commissioning group;

(c) the National Health Service Commissioning Board.

(8) A local authority in England must take such steps as it thinks appropriate for making the arrangements under this section known to—

(a) the parents of children in its area with special educational needs,

(b) young people in its area with special educational needs, and

(c) the head teachers, governing bodies, proprietors and principals of schools and post-16 institutions in its area.

(9) A local authority in England may take such steps as it thinks appropriate for making the arrangements under this section known to such other persons as it thinks appropriate.

(10) In this section—

- “relevant body” means—
 - (a) the governing body of a maintained school, maintained nursery school or institution within the further education sector;
 - (b) the proprietor of an Academy;
- “relevant school or post-16 institution” means—
 - (a) a maintained school;
 - (b) a maintained nursery school;
 - (c) a post-16 institution;
 - (d) an Academy;
 - (e) an independent school;
 - (f) a non-maintained special school;
 - (g) a pupil referral unit;
 - (h) a place at which relevant early years education is provided;
- “responsible commissioning body”, in relation to any particular health care provision, means a body that is under a duty to arrange health care provision of that kind in respect of the child or young person concerned.

(11) For the purposes of this section, the “appropriate authority” for a relevant school or post-16 institution is—

- (a) in the case of a maintained school, maintained nursery school or non-maintained special school, the governing body;
- (b) in the case of a post-16 institution, the governing body, proprietor or principal;
- (c) in the case of an Academy or independent school, the proprietor;
- (d) in the case of a pupil referral unit, the management committee;
- (e) in the case of a place at which relevant early years education is provided, the provider of the relevant early years education.

58 Appeals and claims by children: pilot schemes

(1) The Secretary of State may by order make pilot schemes enabling children in England to—

- (a) appeal to the First-tier Tribunal under section 51;

(b) make a claim to the First-tier Tribunal under Schedule 17 to the Equality Act 2010 (disabled pupils: enforcement) that a responsible body in England has contravened Chapter 1 of Part 6 of that Act because of the child's disability.

(2) An order under subsection (1) may, in particular, make provision—

(a) about the age from which children may appeal or make a claim;

(b) in respect of appeals under section 51, about mediation and the application of section 55;

(c) about the bringing of appeals or making of claims by a child and by his or her parent concurrently;

(d) about determining whether a child is capable of bringing an appeal or making a claim, and the assistance and support a child may require to be able to do so;

(e) enabling a person to exercise a child's rights under an order under subsection (1) on behalf of the child;

(f) enabling children to have access to advice and information which is available to a parent or young person in respect of an appeal or claim of a kind mentioned in subsection (1);

(g) about the provision of advocacy and other support services to children;

(h) requiring notices to be given to a child (as well as to his or her parent);

(i) requiring documents to be served on a child (as well as on his or her parent).

(3) An order under subsection (1) may apply a statutory provision, with or without modifications.

(4) In subsection (3), "statutory provision" means a provision made by or under this or any other Act, whenever passed or made.

(5) This section is repealed at the end of five years beginning with the day on which this Act is passed.

59 Appeals and claims by children: follow-up provision

(1) The Secretary of State may by order provide that children in England may—

(a) appeal to the First-tier Tribunal under section 51;

(b) make a claim to the First-tier Tribunal under Schedule 17 to the Equality Act 2010 (disabled pupils: enforcement) that a responsible body in England has contravened Chapter 1 of Part 6 of that Act because of the child's disability.

(2) The Secretary of State may not make an order under subsection (1) until the end of two years beginning with the day on which the first order is made under section 58(1).

(3) An order under subsection (1) may, in particular, make provision—

(a) about the age from which children may appeal or make a claim;

(b) in respect of appeals under section 51, about mediation and the application of section 55;

(c) about the bringing of appeals or making of claims by a child and by his or her parent concurrently;

(d) about determining whether a child is capable of bringing an appeal or making a claim, and the assistance and support a child may require to be able to do so;

(e) enabling a person to exercise a child's rights under an order under subsection (1) on behalf of the child;

(f) enabling children to have access to advice and information which is available to a parent or young person in respect of an appeal or claim of a kind mentioned in subsection (1);

(g) about the provision of advocacy and other support services to children;

(h) requiring notices to be given to a child (as well as to his or her parent);

(i) requiring documents to be served on a child (as well as on his or her parent).

(4) An order under subsection (1) may—

(a) amend, repeal or revoke a statutory provision, or

(b) apply a statutory provision, with or without modifications.

(5) In subsection (4), “statutory provision” means a provision made by or under this or any other Act, whenever passed or made.

60 Equality Act 2010: claims against schools by disabled young people

In Part 2 of Schedule 17 to the Equality Act 2010 (disabled pupils: enforcement in tribunals in England and Wales), in paragraph 3 (who may make a claim that a school has contravened Chapter 1 of Part 6 of that Act because of a person's disability) for “to the Tribunal by the person's parent” substitute “—

(a) to the English Tribunal by the person's parent or, if the person is over compulsory school age, the person;

(b) to the Welsh Tribunal by the person's parent.”