

# People Scrutiny Commission

19<sup>th</sup> February 2024



**Report of:** Reena Bhogal-Welsh, People

**Title:** Education Health & Care (EHC) Performance Update

**Officer Presenting Report:** Reena Bhogal-Welsh, Director Education & Skills

## **Recommendation:**

-For the People Scrutiny Commission to note the report.

## **The significant issues in the report are:**

In the month of January 2024, the service observed a 35% rise, in number of EHC Needs Assessment requests received in comparison to January 2023.

The service anticipates 1,400 EHC Needs Assessment requests in this calendar year (2024).

In 2023, 48.5% of EHCP's finalised for the first time, within the set statutory timeframe. A 10ppt increase in timeliness on calendar year 2022.

Average wait time for an EHC Needs Assessment, superceding 20 weeks, at the end of January 2024 is 35 weeks.

The demand for Educational Psychology contributions (Appendix D) continues to exceed the services capacity.

At the end of 2023, Bristol had seen a 15.2% decrease of lodged First Tier Tribunal appeals in comparison to 2022.

## 1. Summary

The demand, within the SEND Service, has been increasing year on year since 2019. The demand and pressure on the service will continue into this calendar year.

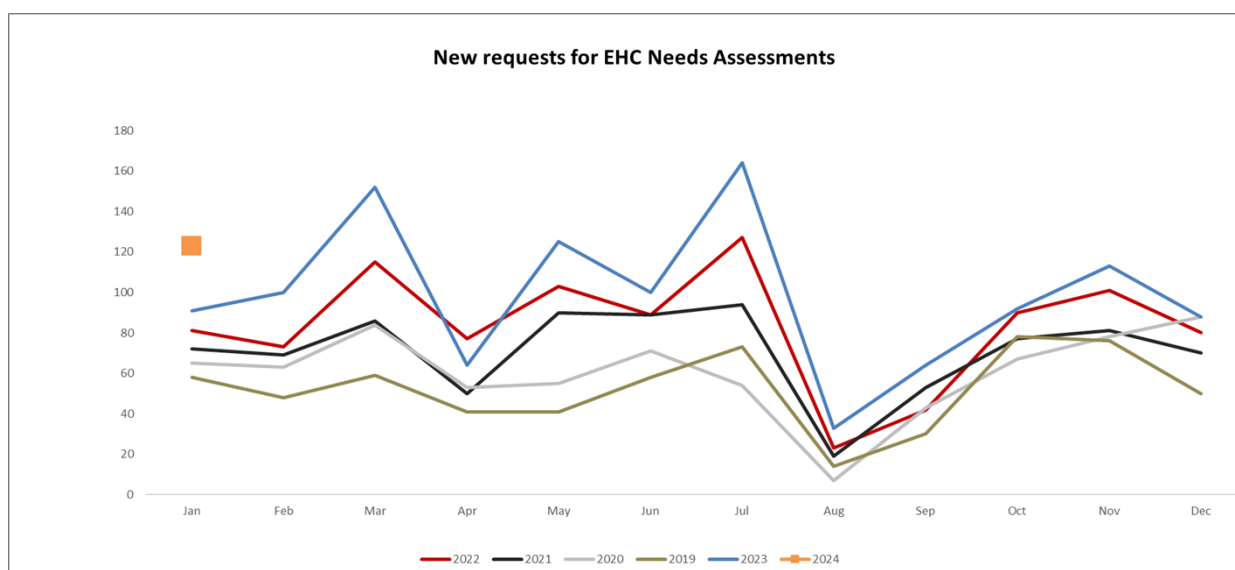
The service, alongside partners, continues to plan, monitor, and allocate resource to ensure those most vulnerable within process are prioritised, as well as children and young people whose assessments supersede the 20-week statutory time frame.

The services focus remains on improving timeliness, ensuring quality within process, and continuing to strengthen our partnerships, across the local area, as well as fostering a shared understanding of the challenges children, young people and their families face. We work towards a proactive service that aspires to support children, young people and their families, promote and build trust with all partners so children and young people with SEND, and their families, have confidence we are working towards the same objectives and, most importantly, the outcomes they aspire to.

## 2. SEND Assessment, Planning & Review Team Performance

### 2.1 EHC Needs Assessment Requests

The trajectory of EHC Needs Assessments (EHCNA) requests received, by the service, continues to rise year on year.



- 2019 - 626 EHCNA requests received
- 2020 - 728 EHCNA requests received (16% increase on 2019)
- 2021 - 850 EHCNA requests were received (17% increase on 2020)
- 2022 - 1001 EHCNA's were received (18% increase on 2021)
- 2023 - 1186 EHCNA were received.

At the end of 2023, the SEND Assessment, Planning & Review Team saw a 18.5% increase in the total number of EHC Needs Assessment requests received, when compared to year 2022. The highest year to year increase so far.

Nationally, initial requests for an EHC Needs Assessment have increased each year since EHC plans were introduced. In 2022, nationally, requests were up by 23%. At the end of 2023, Bristol was 4.5ppt below this, national average, and the continued rise of requests, per year, mirrors the increasing national trend.

If the service sees this trend continue, it is anticipated we will receive in the region of 1,400 EHC Needs Assessments by the end of the calendar year.

In the month of January (2024) Bristol received 123 EHC Needs Assessment requests. A 35% increase when compared to the month of January 2023 (91).

EHCNA requests made for primary aged children account for just over 50% of all requests received. EHCNA requests for children within this phase of education remained the highest in 2022 and 2023.

In the month of January 2024, 21% (26) of all requests received were for children within the early years.

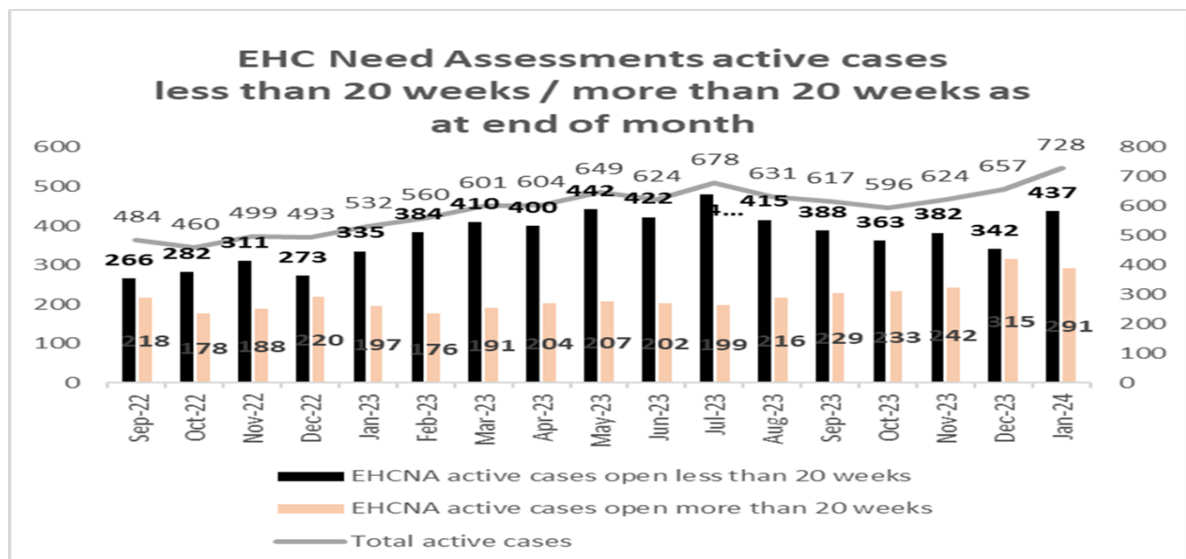
## 2.2 EHC Needs Assessments (live)

At the end of January 2024, the service had 745 open live EHCNA Needs Assessments. The highest in service since 2022 and a 40% increase when compared to January 2023.

421 within the 20-week timeframe  
 324 outside the 20-week timeframe.

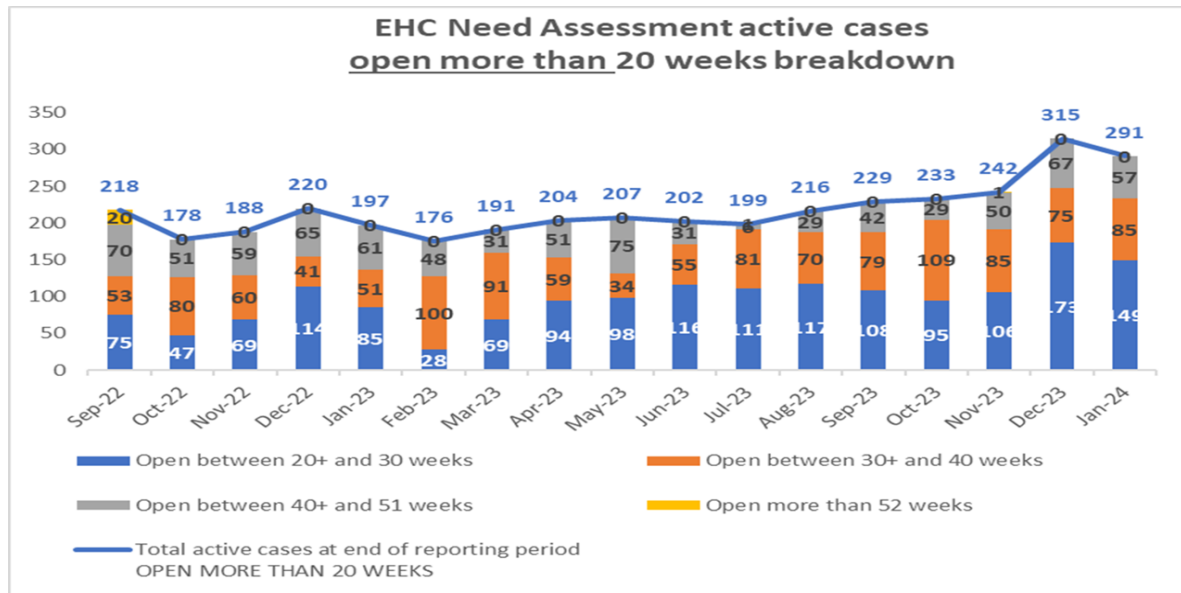
43.5% of EHC Needs Assessments supersede the statutory 20-week time frame.

Of those assessments outside the 20-week timeframe the average number of weeks open, before finalising, has risen to 35 weeks up from 32 weeks in October 2023.



The continued increase in requests for a Needs Assessment, means there are more

assessments in process, within the system, at any one time. This increases the risk of a higher number of EHCNA assessments being open for longer periods, beyond the 20-week timeframe. This meaning the identification of a child or young person’s needs and outcomes remain unknown and the delivery of required special educational provision is prolonged.



Between September 2022 and the end of January 2024 the service has seen a 19% decrease in EHC Needs Assessments open between weeks 40-51. Consequently, the service has seen a 60% increase in EHC Needs Assessments open between weeks 30-40, and a 99% increase in those open between 20 to 30 weeks.

\*2024 figures, as at the end of January 2024.

### 2.3 Finalising Education, Health & Care Plans

*(Including mediation, tribunal & exception cases)*

- 579 EHCP’s were finalised for the first time during the calendar year 2021.
- 791 EHCP’s were finalised for the first time during the calendar year 2022 (37% increase on 2021).

Between January and December 2023, 726 EHCP’s were finalised for the first time.

This is an 8% decrease when compared to those finalised in 2022 (791).

Of those finalised in 2023

- 352 were within the statutory 20-week timeframe.
- 374 exceeded the 20-week timeframe.

Overall, 48.5% of EHCP’s finalised for the first time, in 2023, were within the set statutory timeframe.

## 2.4 Timeliness

Figures using the DfE KPI (*which excludes mediation, tribunal cases & exceptions*).

The DfE’s KPI’s align to the statutory timetable and are used to monitor local operational performance. Performance is measure quarterly.

### 2023 Performance by Quarter

Reporting			Number finalised EHC Plans	Number finalised EHC Plans within 20 weeks	% finalised EHC Plans within 20 weeks
2023 Calendar Year (CYTD)			726	352	48.5%
Quarterly	1st Qtr (CY)	Jan 23 to March 23	159	63	39.6%
Quarterly	2nd Qtr (CY)	April 23 to June 23	182	80	44.0%
Quarterly	3rd Qtr (CY)	July 23 to Sept 23	190	108	56.8%
Quarterly	4th Qtr (CY)	Oct 23 to Dec 23	195	101	51.7%

The overall yearly average for finalising first time final EHCP’s within the 20-week time frame equated to 48.5%.

0 finalised EHCP’s breached 52 weeks in 2023.

Nationally, the rate of first time EHC Plans issued within 20 weeks is 49.2%. The service finished the year (2023) with a 10.6ppt increase on 2022, 13.3ppt above the average for the region and 0.7ppt below the national average.

### 2024 Performance by Quarter

#### **(Predicted) Quarter 1 (01 January - 31 March 2024)**

163 EHCP’s to be finalised for the first time.

57 within the statutory 20-week timeframe

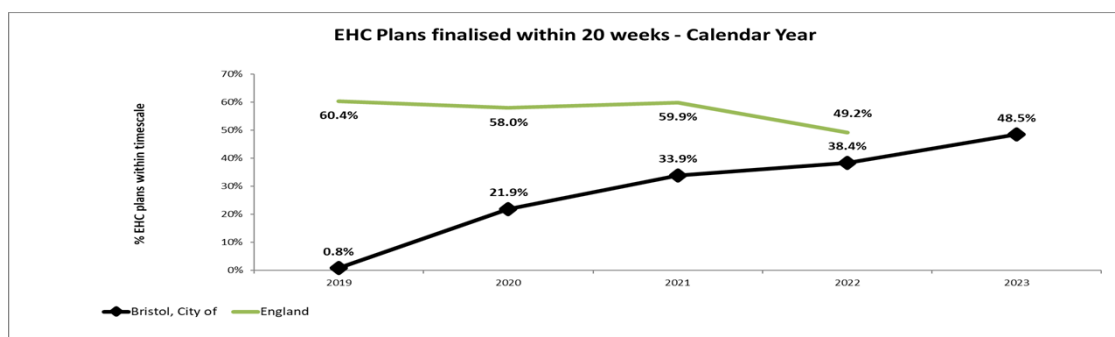
End of 1<sup>st</sup> quarter on time at 34.9%.

At the end of Quarter 1 (2024) it is predicted we will finish 4.7ppt lower than Quarter 1, 2022.

In 2022, Bristol finalised 37.9% of first time final EHCP’s within the 20-week timeframe. This saw Bristol the third lowest of core cities.

New EHC Plans issued within 20 weeks				
Core Cities	Excluding Exception Cases			
	% EHCPlans issued within 20 weeks			
	2019	2020	2021	2022
Bristol, City of	0.8	21.9	33.9	37.9
Birmingham	71.6	39.9	59.7	65.6
Leeds	96.1	88.8	88.7	12.3
Liverpool	7.5	9.2	59.7	92.0
Manchester	66.7	51.0	72.6	57.5
Newcastle upon Tyne	51.4	43.9	15.3	12.8
Nottingham	98.1	83.4	81.7	45.5
Sheffield	69.1	82.6	50.2	80.1

In 2023, the service finalised 48.5% of first time final EHCP’s, within the 20-week timeframe, improving timeliness by 10.6 percentage points.



## 2.5 Legacy

As the service sees the continued rise of EHC Needs Assessments in process, there remains a tension between finalising EHC Needs Assessments (within the 20-week timeframe), finalising those already outside 20 weeks (legacy), reducing the number of weeks open for assessments superseding the 20-week timeframe whilst ensuring no assessment supersedes 52 weeks.

This pressure will continue into calendar year 2024 and will remain for as long as there are overdue assessments in the system and the Educational Psychology Services (EPS) resource capacity is resolved.

At the end of 2023, EHC Needs Assessments that superseded the 20-week timeframe are being issued, a draft EHCP, between week 20 through to the longest wait at week \*47.

\*8 children/young people who had a wait time of 47 weeks, as at end of December 2023.

Legacy cases are currently finalised, on \*average, within 35 weeks.

\*The average figure accounts for open EHC Needs Assessments outside of the 20-week timeframe, it does not factor in those still within the 20-week timeframe.

The SEND Assessment Team is split to dedicate staff resource to both assessments within the 20-week timeframe and those superseding the 20-week timeframe (legacy). All EHC Needs

Assessments, in progress, are monitored and have dedicated oversight by the team.

The service continues work towards increasing the number of EHC Needs Assessments completed within the statutory 20-week timeframe and reducing the average number of weeks open for those superceding this timeframe. However, until the challenges around the Educational Psychology Services (EPS) resourcing is resolved the average week wait will rise, the number of EHC Needs Assessments superceding the 20-week timeframe will increase and the number of EHC Needs Assessments completed within the 20-week time frame will reduce. This meaning the services overall timeliness will reduce.

The demand for Educational Psychology (EP) contributions (Appendix D) continues to exceed the capacity of the EPS. Increased capacity will be integral to overcoming these challenges as will be keeping staffing stable and at full complement within the SEND Assessment Team. The Assessment Team is currently operating 5 below establishment; recruitment is underway to ensure the team are staffed to full establishment, equivalent of 20 FTE. The EPS has recently appointed EP's who will join the team in September 2024, once qualified and recruitment, within the EPS, continues.

Although Bristol continues to recruit EP's there remains a national shortage. A recent report, from the Department for Education, found that 88% of Local Authorities are having difficulty recruiting EP's.

The EPS is utilising the use of locum staff and trialling existing Local Authority EP's working overtime to increase capacity, as a short-term measure, whilst recruitment is underway.

The SEND Assessment Team and EPS monitor and allocate EP time for EHC Needs Assessments on a weekly basis, informed by the data held between the two teams. Weekly monitoring and allocation enable the teams to match available EP time to open EHC Needs Assessments. This meaning allocation and assessment is as swift as capacity allows.

Increases in EHC Needs Assessments superceding the 20-week time frame put pressure on Educational Psychology (EP) allocation to ensure that assessments do not breach week 46 (our current internal target).

The weekly monitoring of all EHC Needs Assessments, with key officers from Children's Social Care and Specialist Health Advisors (SHAS) for SEND (*monthly*) will continue. As will joint allocation planning as this will be integral to agreeing priorities going forward; Children in Care and those approaching Key Stage Transfer.

## **2.6 Development**

### **Priorities for 2024**

#### EHCP Process Improvement

The service has been working alongside a commissioned delivery partner to identify areas that could be developed and implement improvements, within the EHCP process, to reduce manual effort to reduce pressure, within the system, and support timeliness in processing undertaken.

The team, alongside the SEND Assessment, Planning & Review Team, is working towards the implementation of four robotic process automation opportunities:

- Email audit trail logging in which will process key emails into the electronic system case notes.
- An automation aimed at populating pre-panel reports, currently completed by the SEND Assessment Coordinators.
- Annual Review processing where it has been identified that no changes to the EHCP are required.
- Letter creation and send (including attachments) for high-volume letters currently processed by SEND officers.

Two non-automated opportunities will also be implemented aiming to improve EHCP process communication and developing the wider use of web forms.

### Sufficiency

In early 2020, Cabinet approved a programme of works to create additional capacity, within the SEND estate, to deliver sustainable sufficiency of specialist places, as far as possible, within the city for children and young people with SEND.

At the beginning of 2024 Bristol's newest Resource Base opened; The Meadow at Easton CE Academy. This Resource Base will provide twelve places for children with Autism and speech, language, and communication needs.

Since the mayoral pledge in 2020, to create an additional 450 specialist education places in the city, we have delivered 320 places with a further 98 currently in delivery.

### SEND Strategy

Coproduction of Bristol's new SEND and inclusion strategy started at the beginning of February 2024, with a well-attended partnership event. To ensure that the strategy is fully coproduced the timeline for completion has been extended to July 2024. This extension will allow time for families, education settings, Bristol council, health, and community partners to contribute their thoughts and ideas to ensure the strategy truly reflects the voices of those connected to SEND and those committed to delivering it. The coproduction activities will be based on the findings of our recent partnership wide self-evaluation, which identified our strengths as well as areas for improvement, within the city's SEND services.

## **2.7 Annual Reviews**

The SEND Assessment, Planning & Review Team has 18 full time equivalent Senior Inclusion Officers (SIO), split between Pre 14 and Post 14 Inclusion Teams.

Bristol currently has 4,408 EHC plans in service which must be reviewed at least every 12 months and for those under 5 years of age, reviewed every 3- 6 months. Of these, 81% (3573) EHC plans issued more than 12+ months.

1,947 have had an annual review decision letter (*notification of the decision as to whether to*



*retain, cease or amend the plan following the annual review meeting*) sent within the previous 12 months (54%).

Children and Young People at risk of placement breakdown and/or Permanent Exclusion is high in service, taking considerable SEND Officer time affecting the timeliness of statutory processing in team.

The Local Authority does not have capacity to attend all Annual Reviews and currently prioritises attendance for children and young people, in specific circumstances for example; children/young people in care, those with Youth Justice involvement, when families or schools request support, at emergency annual reviews - where there is risk of placement breakdown, a child is classified as either 'pupil missing education' or 'child missing education' or there is a significant change of need and at Key Stage Transfer.

The team continue to provide support and guidance to schools and professionals to improve the quality of the Annual Review process and timeliness.

## **2.8 First Tier SEND Tribunal**

Appeals lodged (*SENDIST Registration letter received by the Local Authority*)

2021- 37 appeals lodged

2022- 118 appeals lodged

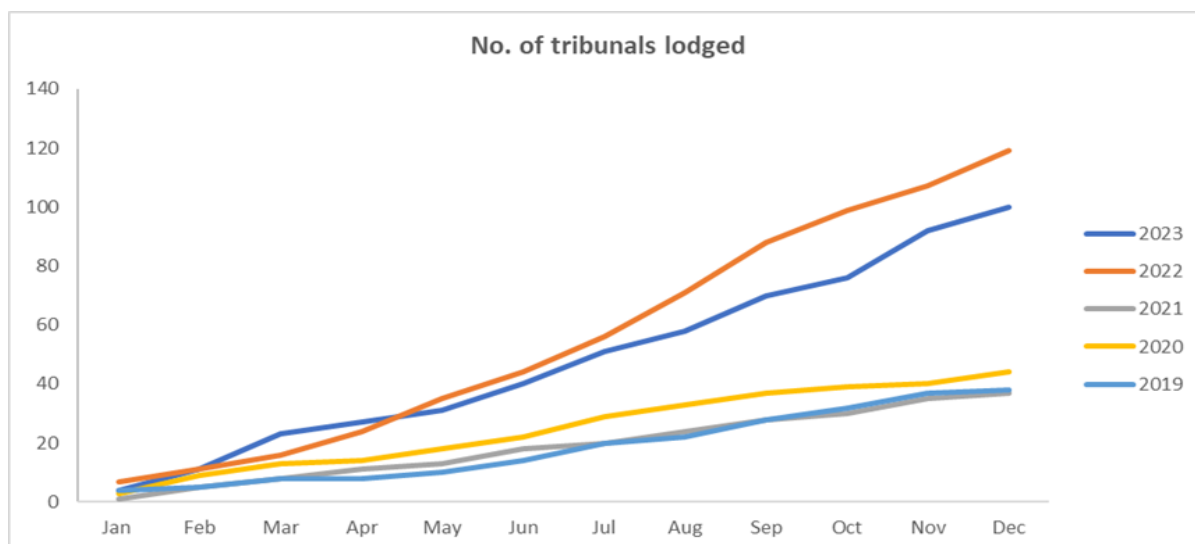
2023-100 appeal lodged

At the end of 2023, Bristol had seen a 15.2% decrease of lodged appeals when compared to 2022.

So far in 2024, Bristol has had 12 appeals lodged. This is a 9% increase when compared to the same period last year (11).

Of the 100 Tribunal appeals lodged in 2023, 78 have concluded and 22 remain ongoing. All ongoing appeals, from 2023, are content appeals.

Of those concluded, 8 appeals went to hearing all of which were found in favour of the appellant.



The number of appeals will reflect the volume of work against appealable decisions being made by the Assessment (EHCNA) and Inclusion (annual review) teams, within the SEND Assessment, Planning & Review team.

The main factors that continue to acerbate the volume of appeals, in Bristol, is the availability of specialist provision places and differences in opinion regarding the special educational provision required, the level of support and/or therapy required to meet a child or young person’s individual educational needs.

Reasons for appeals (grounds of appeal):

	2019	2020	2021	2022	2023	2024
Refusal to Assess	12	5	<5	46	39	<5
Refusal to Issue	6	7	8	12	12	<5
Content of EHCP	15	29	28	61	45	6
Decision not to amend after review	0	0	0	0	< 5	0
Decision to Cease	5	<5	0	0	0	0
Transfer of appeal from other LA	0	<5	0	0	0	0
Decision not to amend after a re-assessment of needs	0	0	0	0	< 5	0

\*Where the number of cases is less than 5 the data has been suppressed to preserve confidentiality.

In 2023, content appeals (Section B, F & I of the EHCP) still accounted for the highest proportion of lodged appeals (45) mirroring 2022. However, this was a 26.2% decrease when compared to content appeals lodged in 2022 (61).

Of these 45, content appeals 9 included Section I (placement) and 15 were extended appeals’ involving health and social care.

Refusal to Assess was the second highest reason for appeals lodged in 2023 (39). This also decreased (15.2%) when compared to Refusal to Assess appeals lodged in 2022.

Of the total Tribunals lodged (103) in 2023:

Tribunal Outcomes	2023
Ongoing	22
No hearing held	70
Hearing held - upheld ( <i>in favour of appellant</i> )	8
Hearing held – not upheld ( <i>in favour of LA</i> )	0

No hearing held outcomes	2023
Settled	10
Conceded	54
Withdrawn	6

Of those that have been to hearing regarding content (Sections B & F) it is often the case that agreement on outstanding points of dispute will be negotiated between parties prior to and during the hearing.

There is a continued emphasis on reaching resolution prior to hearing. The Tribunal Managers remain committed to this approach; with full consideration of each case undertaken with the link SEND Officer, early contact and working with parent/carers and young people to avoid progression to appeal wherever possible.

Of cases that do go to appeal, there is a continual emphasis on ongoing negotiation to reach full agreement or to reduce the outstanding points of dispute to be decided in hearing.

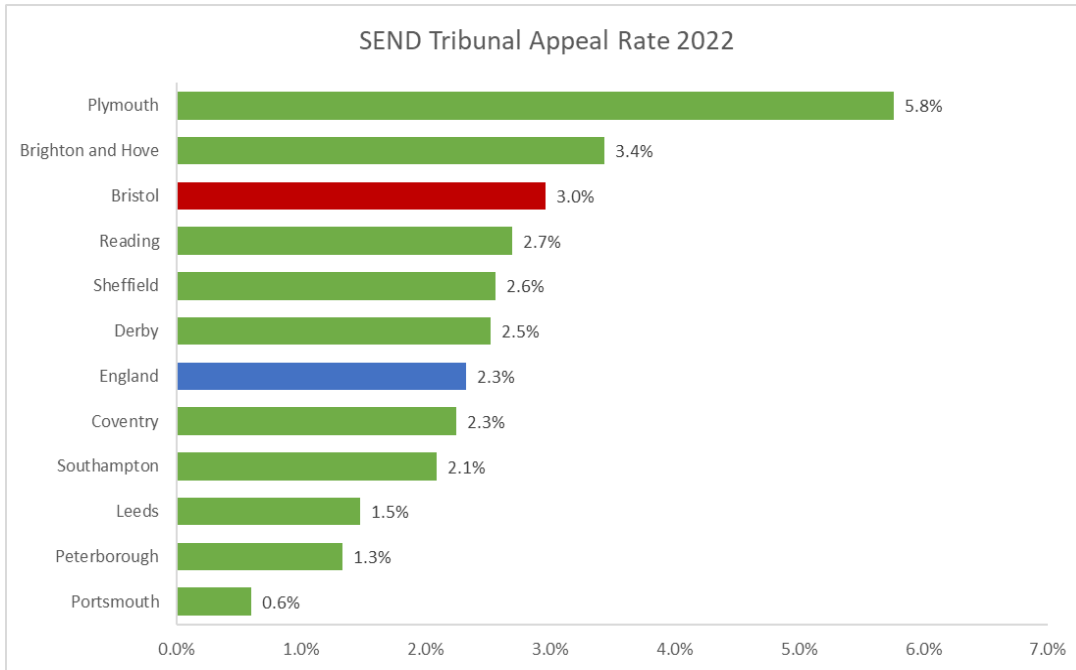
The Tribunal Managers remain committed to fostering a knowledge sharing environment and key learning points are shared widely through scheduled Learning & Development sessions.

### Rate of Appeals

The DfE calculates appealable decisions using the SEN2 data. The Total Appealable Decisions figure is calculated as the sum of the following:

- Number of initial requests for Education, Health, and Care (EHC) assessments refused.
- Number of assessments completed, and a decision made not to issue an EHCP.
- Number with an EHCP as of January each year.
- Number of EHCP’s ceased because the special educational needs of the child or young person are being met without an EHCP.

In 2022, the rate of appeals in Bristol was 3%, above the national average of 2.3%.



This saw Bristol the third highest of core cities for rate of appeals.

Core Cities	SEND Tribunal Appeal Rate	
	2021	2022
Bristol, City of	1.0%	3.0%
Birmingham	3.3%	4.9%
Leeds	1.5%	1.5%
Liverpool	2.7%	3.7%
Manchester	0.6%	0.7%
Newcastle upon Tyne	0.3%	0.5%
Nottingham	1.3%	2.5%
Sheffield	2.1%	2.6%

In 2023, the rate of appeals in Bristol was \*2.1%,

*\*Please note this % is provisional, whilst end of year totals are consolidated.*

It is important to recognise that whilst, Bristol’s rate of appeals has decreased, our appealable decisions have risen on 2022.

*Core city data for 2023, unavailable currently.*

The Ministry of Justice have acknowledged that nationally there has been a rise year on year of First Tier Tribunals stating in their most recent Tribunal statistics Quarterly: June-Sept 2022 published 8 December 2022:

*The SEND Tribunal continues its upward trajectory, increasing steadily over the last seven years from 3,100 in 2014/15 to registering the highest number of appeals (11,000), in the academic year 2021/22, an increase of 251%. The increase is likely due to the continued effect of Education Health and Care plan reforms introduced which extended the provision of support from birth to 25 years of age. HMCTS has recruited additional judges and prioritised appeals involving school transfers to help deal with the rise.*

[Tribunal Statistics Quarterly: July to September 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/tribunal-statistics-quarterly-july-to-september-2022)

### 3. Policy

*Not applicable*

### 4. Consultation

#### a) Internal

*Not applicable*

#### b) External

*Not applicable*

### 5. Public Sector Equality Duties

- 5a) Before making a decision, section 149 Equality Act 2010 requires that each decision-maker considers the need to promote equality for persons with the following “protected characteristics”: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. Each decision-maker must, therefore, have due regard to the need to:
- i) Eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Equality Act 2010.
  - ii) Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to --
    - remove or minimise disadvantage suffered by persons who share a relevant protected characteristic.
    - take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of people who do not share it (in relation to disabled people, this includes, in particular, steps to take account of disabled persons' disabilities).

- encourage persons who share a protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- iii) Foster good relations between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to –
- tackle prejudice; and
  - promote understanding.
- 5b) < Insert a note on how the public sector equality duties are relevant to the proposals and how these duties have been taken into account in developing the proposals. Where an equality impact assessment has been undertaken, summarise its findings here and provide link to full document, or include the equality impact assessment as an appendix. Where no equality impact assessment has been undertaken, give reasons why not>.

**Appendices:**

*None*

**LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985**

**Background Papers:**

*None*