



# Wasting money, wasting potential: The cost of SEND tribunals

September 2023

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Pro Bono Economics uses economics to empower the social sector and to increase wellbeing across the UK. We combine project work for individual charities and social enterprises with policy research that can drive systemic change. Working with almost 500 volunteer economists, we have supported over 500 charities since our inception in 2009.

The Disabled Children's Partnership is a coalition of over 110 organisations that campaign for improved health and social care for disabled children, young people and their families. The Learning Hub, established in 2020, is a collaboration with Pears Foundation to build the evidence base for disabled children in response to the disproportionate impact that the COVID-19 pandemic had on their lives and futures.

Thank you to all the young people, their parents and their carers, who shared their stories with us.



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A record

**11,052**

SEND tribunals were  
registered in England in  
2021-22

**£59.8  
million**

of public money wasted on  
SEND tribunals

**96%**

of SEND tribunals were  
won by parents, carers  
and young people in  
2021-22

**9,960**

SEN unit places could be  
funded each year with money  
wasted on lost SEND tribunals



## Summary

Whether it be sessions with a physiotherapist, or community support with play and friendship, access to special teaching units in mainstream schools or a nurse trained to assist with eating during the school day, children and young people with special educational needs and disabilities (SEND) have a right to additional support to survive and thrive.

However, the system in place to provide this support is under increasing pressure. The number of education, health and care plans (EHCPs) - which consolidate a young person's education, health and social care support into a single legal document issued by local authorities in England - have surged, with more than twice as many new EHCPs issued in 2022, compared to 2015. This growth reflects both the increased awareness and understanding of special educational needs (SEN), and a growing number of parents and carers recognising that they require an EHCP in place for their child's needs to be adequately met.

As these numbers have accelerated, decisions are taking longer. In 2022, for the first time, fewer than half of all EHCPs were issued within the statutory minimum of 20 weeks.

And though decisions are taking longer, the extra time is not leading to better decisions. Indeed, parents, carers and young people are finding themselves in such serious disagreements with local authorities over their EHCPs that a record number of cases are being taken to tribunal. In 2021-22, over 11,000 SEND tribunal appeals were registered in England, marking a 29% increase from the previous year, and meaning one SEND tribunal was registered for every six new EHCPs that were issued. The tribunal process is the vehicle that enables the voice of families to be heard and these tribunals are almost universally ruled in favour of the parent, carer or young person challenging the local authority's decisions, with 96% going their way.

As a result, in 2021-22, the public sector wasted nearly £60 million losing EHCP tribunal disputes – costs of over £46 million to local authorities and over £13.5 million to the courts. That money could have funded up to 9,960 additional SEN unit places, for children with SEN taught in separate classes for at least half their time within mainstream schools.

These direct costs to the public purse are, however, just the tip of the iceberg. Nearly 3,500 disputed EHCP cases were withdrawn or conceded in 2021-22. If public sector staff spent as much time preparing for appeals that are registered but not heard as they do preparing for tribunals that go to hearings, Pro Bono

Economics (PBE) estimates that total public sector spend on SEND tribunals could be as high as £80 million.

This is a significant cost for many local authorities that are already under serious financial pressure, including an estimated £600 million annual SEND funding gap.

There are also likely to be both short- and long-term costs that accrue while children and young people with SEND are waiting for suitable support, and because of the stress which builds while battling for that support. From additional treatment and equipment needs, to developmental delays, and from dropped academic grades, to additional use of the foster care system, the costs to the taxpayer and the negative outcomes for children, young people and their families can rapidly accumulate.

This is on top of the significant financial costs – often thousands of pounds - many families incur from taking disputes to tribunal. And with families reporting hundreds of hours spent preparing for tribunals, it is likely that the toll of SEND tribunals affects parents' ability to work during this time – therefore further impacting the public purse and family incomes. While there are many complex factors contributing to their employment and earnings status beyond tribunals, it is notable that, for example, fewer than half (45%) of single parents with disabled children are in work, compared with two-thirds (67%) of single parents with non-disabled children. Of those in work, couples with disabled children earn an average of £274 less each week than couples with non-disabled children.

Meanwhile, over the past decade, employment of disabled people has increased significantly, benefiting both the economy and individuals in terms of income and wellbeing. But disabled individuals are still underrepresented in the workforce and face lower average earnings than non-disabled workers. Supporting young people with SEND to achieve their potential can bridge this gap, by enhancing their employment prospects and chances of living independently as adults, increasing their long-term contribution to the economy, personal income and wellbeing, while reducing public spending.

The problems surrounding EHCPs are not straightforward to solve – but the trends show that they are longstanding and worsening, and therefore well overdue for intervention. A wide range of pressures are calling on public sector budgets. Yet by wasting nearly £60 million on lost tribunals, the government is gaining little by forcing parents, carers and young people down this painful and costly route. Instead, investing that resource into making the EHCP system work more effectively, ensuring more young people are supported to achieve their full potential, and more parents of disabled children able to participate in the workforce, will yield valuable, long-term economic benefits.

## Introduction

### Provision of EHCPs has more than doubled over the past seven years

When the government introduced reforms to the special educational needs and disabilities (SEND) system in 2014, they were widely welcomed. A key aim of the reforms was to better link and simplify support for young people with SEND, with the introduction of education, health and care plans (EHCPs), a cornerstone of the new approach. EHCPs bring together a young person's education, health and social care support into a single legal document, issued by the local authority, which outlines their needs, as well as how and where those needs will be met.<sup>1</sup> A young person, up to the age of 25, can apply for an EHCP. Since their introduction, uptake of EHCPs has increased rapidly. In 2022, 66,000 new EHCPs were issued, compared to 28,000 in 2015.<sup>2</sup> This took the total number children and young people in England<sup>3</sup> with EHCPs to 517,000 in January 2023.

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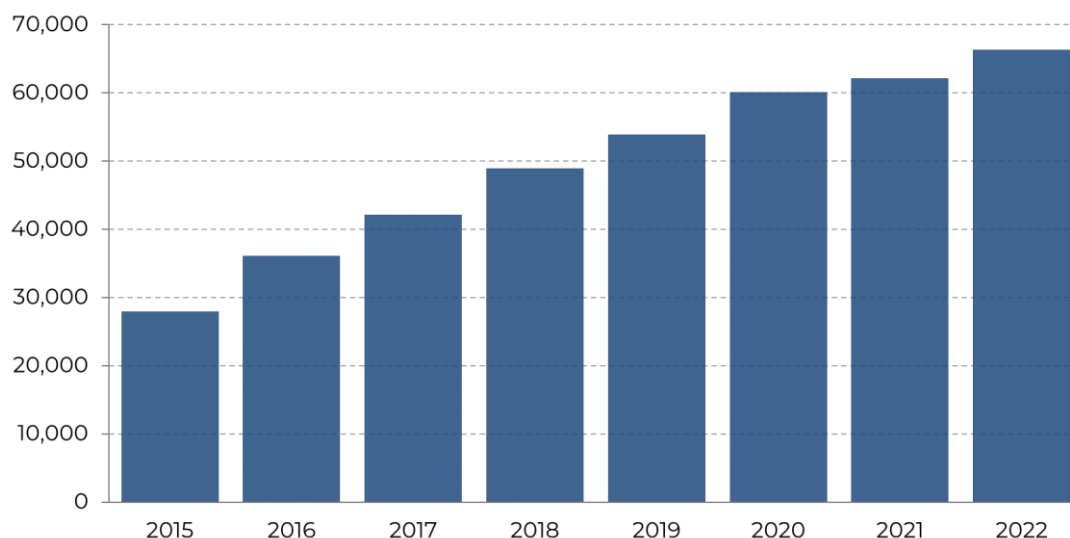
<sup>1</sup> EHCPs can be issued for children or young people aged 0 to 25. Once an EHCP has been issued, a local authority is legally required to provide the support set out in the plan. This includes details of the support the child or young person is entitled to and allocates a particular provider to do so (for example, a named school).

<sup>2</sup> [Explore education statistics service](#). Special educational needs in England 2022/23

<sup>3</sup> Local authorities in Wales, Scotland and Northern Ireland have different systems for allocating SEND support.

Figure 1: The number of new EHCPs issued each year has been increasing ever since their introduction in 2015

Number of new education, health and care plans (EHCPs) issued annually, England, 2015-2022



Source: [Explore Education Statistics service](#), Education, health and care plans.

In part, the growth of EHCPs reflects a broader trend in the growing awareness, identification and understanding of special educational needs (SEN) among the population. The percentage of school pupils in England receiving additional SEN support without an EHCP (i.e., support provided within a school's existing SEN budget) has increased steadily over the past seven years, from 11.6% of pupils in 2015-16 to 13% of pupils in 2022-23.<sup>4</sup>

But the growth in EHCP applications is also driven by other factors. Primarily, EHCPs are legal documents that are intended to ensure a child/young person's needs are appropriately met. It is therefore particularly likely that parents/carers will seek an EHCP where existing, mainstream SEN support is not adequately meeting their child's needs.<sup>5</sup> In addition, medical advances are likely to mean more children are surviving complex conditions, which could be driving up applications for EHCP support, while the impact of the pandemic, for example, on children's speech and language development could also be a factor.

<sup>4</sup> [Explore education statistics service](#), Special educational needs in England 2022/23

<sup>5</sup> For example, the Education Committee report states: "The intense focus on Education Health and Care Plans and the transition date has led to children on SEN Support being neglected. Children are unable to access appropriate support at this level, which has led to a lack of early intervention, and an increase in parents applying for Education Health and Care Plans because they appear to be the only way to open doors for access to support that has become rationed and difficult to access."

## For families and young people, securing an EHCP can be a long, complicated and stressful process

The journey to securing an EHCP can be complex. As summarised in [Figure 2](#), it involves multiple agencies and services, and requires assessment, evidence-gathering, the development of a draft plan and agreement of its contents. And that does not end once the EHCP is in place, as EHCPs are meant to be reviewed annually to ensure they remain up-to-date.

Indeed, the burdens of the evidence requirements and assessments have been found to be so complex that a 2019 House of Commons Education Committee<sup>6</sup> review of the 2014 SEND reforms described applicants having to navigate a “treacle of bureaucracy” to access appropriate support.

*“Navigating the SEND system should not be a bureaucratic nightmare, difficult to navigate and requiring significant levels of legal knowledge and personal resilience.”*

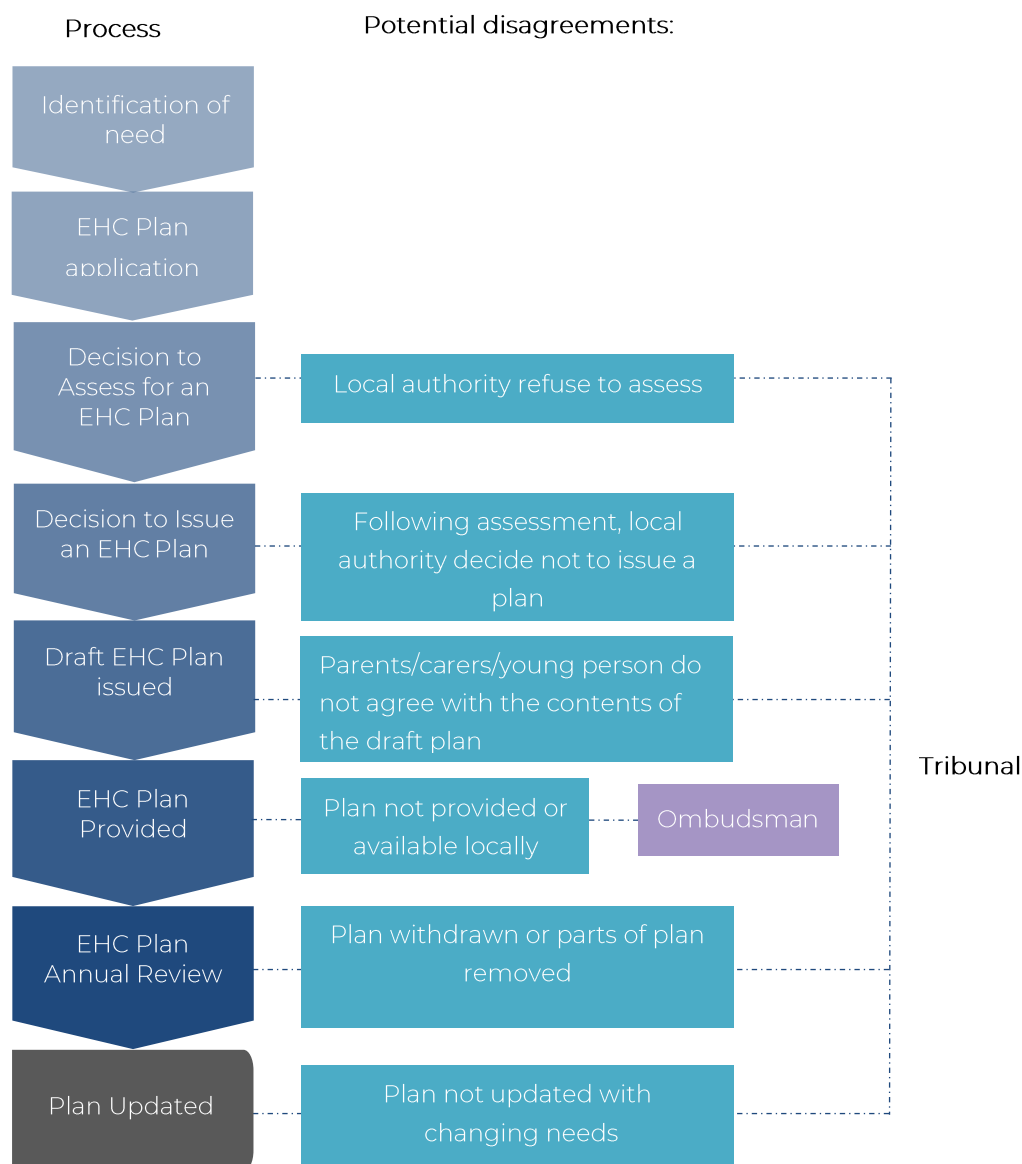
- House of Commons Education Committee

The burden of evidence-gathering is often felt most acutely by parents/carers and young people, chasing external therapists and subject matter experts for reports that ensure EHCP accuracy.

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<sup>6</sup> House of Commons Education Committee, [Special educational needs and disabilities](#), October 2019

Figure 2: The EHCP journey



Source: Disabled Children's Partnership

And while there is a statutory deadline of 20 weeks in which EHCPs are meant to be delivered, in 2022, fewer than half (49%) of EHCPs were delivered on time – the lowest level of EHCPs delivered on time in eight years.<sup>7</sup> That means that an already burdensome process for parents/carers, young people and local authorities is taking longer than it should, and, in the meantime, children and young people with SEND are not receiving adequate support.

<sup>7</sup> [Explore Education Statistics service](#), Education, health and care plans, 2023



*"Our daughter was always bright but struggled with social skills and keeping her emotions in check. We had to pay for a diagnosis of autism because NHS waiting lists were so long. The local authority assessed her for an EHCP, but their experts said she wasn't known to their services because we had been forced to get a private assessment. The bureaucracy felt like a vicious circle. When her mental health deteriorated to the point she was refusing to attend school, we begged for the help we had assumed they would see she desperately needed. It was well over a year of to-ing and fro-ing - correcting reports, challenging inadequate provision and words they had put into our mouths, that we had never uttered - before we finally got an EHCP. The pressure impacted the whole family."*

- A parent

The design of the EHCP system creates fundamental tensions between local authorities and people seeking support

The Education Committee report cited above also highlighted a fundamental challenge within the design of the new EHCP system – namely that local authorities act as both assessors of need and commissioners of services, which erodes trust between parents/carers and young people, and their local authorities.

*"We heard many times about the conflicts of interest, or challenges, that appear to exist with the local authority as both the assessor and the commissioner. That is a tension that is difficult to overcome - we heard arguments about why the local authority is best placed to play those dual roles, while we also heard how professionals make decisions that are overridden by budgetary constraints or a lack of commissioned provision. This in turn creates distrust between local authorities and parents and carers, moving us even further away from the concept of local authorities as allies."<sup>8</sup>*

- House of Commons Education Committee, 2019

At the same time, many local authorities are managing significant budget challenges. In 2021, the Local Government Association (LGA) estimated<sup>9</sup> councils faced an additional £2.6 billion of cost pressures each year to

<sup>8</sup> House of Commons Education Committee, [Special educational needs and disabilities](#), October 2019

<sup>9</sup> Local Government Association, [Spending Review 2021 Submission](#), October 2021

maintain 2019-20 levels of service. In this context, increasing need for SEN support is putting even more pressure on councils. The LGA estimated that councils face an annual £600 million SEND funding gap, *despite* significant additional investment from the Department for Education (DfE) in high needs budgets. In addition, research for the Disabled Children's Partnership in 2021<sup>10</sup> estimated that to *sufficiently* meet the health and social care services need of disabled children in England, an additional £573 million spend is required for social care services by local authorities and £1.5 billion by the NHS every year.

### The result is a growing number of disagreements between people applying for SEND support and local authorities

The combination of growing applications for EHCPs, local authority staff struggling to meet this need while managing tight SEND budgets, and an erosion of trust between people seeking support and local authority staff, is resulting in a growing number of disagreements about EHCP decisions. In such instances, the tribunal process is the vehicle that enables the voices of families to be heard.

Disagreements can arise at any stage of the EHCP process, as set out in [Figure 2](#). For example:

- Parents/carers and young people may challenge the local authority's decision not to assess for an EHCP, or not to issue an EHCP once the assessment is made.
- They may challenge the content of a draft EHCP – such as the assessment of a child/young person's needs, the nature of the support they will receive, or where they will receive support (EHCPs can include the name of a specific school a child is required to attend). In some cases, the draft EHCP may recognise a child/young person's additional needs, but not set out appropriate support they will receive, for example: in wraparound services like speech and language therapy.
- EHCPs are required to be reviewed and updated every 12 months, reflecting the changing nature of a child/young person's needs as they grow up. A parent/carer or young person may disagree with the

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<sup>10</sup> Development Economics, [The Gap Widens: The Economic Case for Closing the Funding Gap for Disabled Children's Health & Social Care Services](#), 2021

updated EHCP contents or the local authority's decision to terminate the EHCP. They may also challenge the local authority if it does not carry out annual reviews.

### And a growing number of EHCP disagreements are ending in tribunal hearings

When disagreements arise, they are generally initially discussed with local authority staff via calls, emails and meetings. If they remain unresolved, there are more formal channels that a parent/carers or young person can pursue, such as local authority complaints processes and third-party mediation services.<sup>11</sup>

Yet a growing number of parents/carers and young people are turning to tribunals<sup>12</sup> to resolve their disagreements.

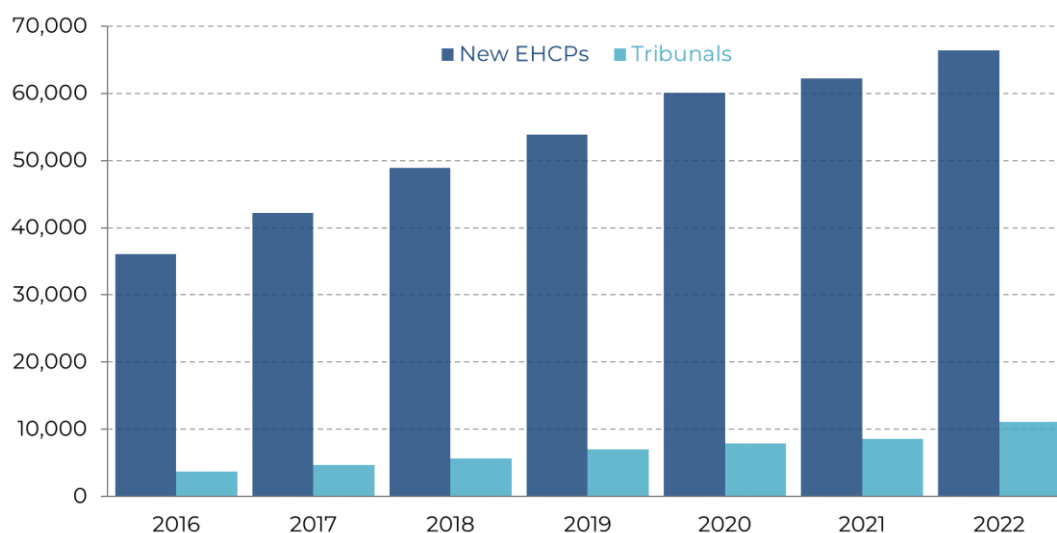
In 2021-22, over 11,000 SEND tribunals were registered. This is a 29% increase on the number of tribunals registered in 2020-21, which, as [Figure 3](#) highlights, continues the upward trend in the number of SEND tribunals registered since 2015. Moreover, tribunal numbers represent a considerable proportion of the overall number of new EHCPs being issued each year. It is notable that, despite large increases in the number of EHCPs issued in recent years, in 2021-22 one SEND tribunal was registered for every six new EHCPs that were issued, compared to one for every ten in 2015-16.

<sup>11</sup> In 2022, 5,900 mediation cases were reported, some of which proceeded to tribunal. Source: Ministry of Justice, [Special Educational Needs and Disability Tribunal Tables](#), 2021-22

<sup>12</sup> Tribunals are specialist courts, where citizens can appeal decisions made by government. The tribunal panel (comprising a tribunal judge and specialist members with experience/knowledge of children with SEND) is responsible for handling appeals against local authority decisions about SEN. Its role is to assess whether a local authority has followed the law and the SEN and Disability Code of Practice when making decisions, including about EHCPs.

Figure 3: The number of SEND tribunals has increased consistently over the past seven years both in absolute terms, and as a proportion of the total number of new EHCPs issued

SEND tribunal appeals, England 2015-16 to 2021-22, and new EHCPs issued England, 2016 to 2022



Notes: New EHCPs issued are reported annually for the calendar year, while SEND tribunals are reported for the academic year (August to August). In the above chart the number of SEND tribunals registered for the academic year is plotted on the latter of those two years (for example, the result for 2021-22 is plotted on 2022).

Source: Explore Education Statistics service, Education, health and care plans.

*"I decided to go ahead with a tribunal as mediation with our local authority was a pointless task and didn't progress anything. The local authority minimised Lenny's care needs and the enormity of his life-limiting diagnosis and refused an EHCP. I felt it was the only option left to ensure Lenny had some support - support that he desperately required and continues to need.*

*His needs have increased since starting school and it only proves my stance that an EHCP was absolutely necessary. He clearly qualified. Being in a class of 30 as a wheelchair user without a teaching assistant or further support was ridiculous - no primary school teacher can manage that situation alone."*

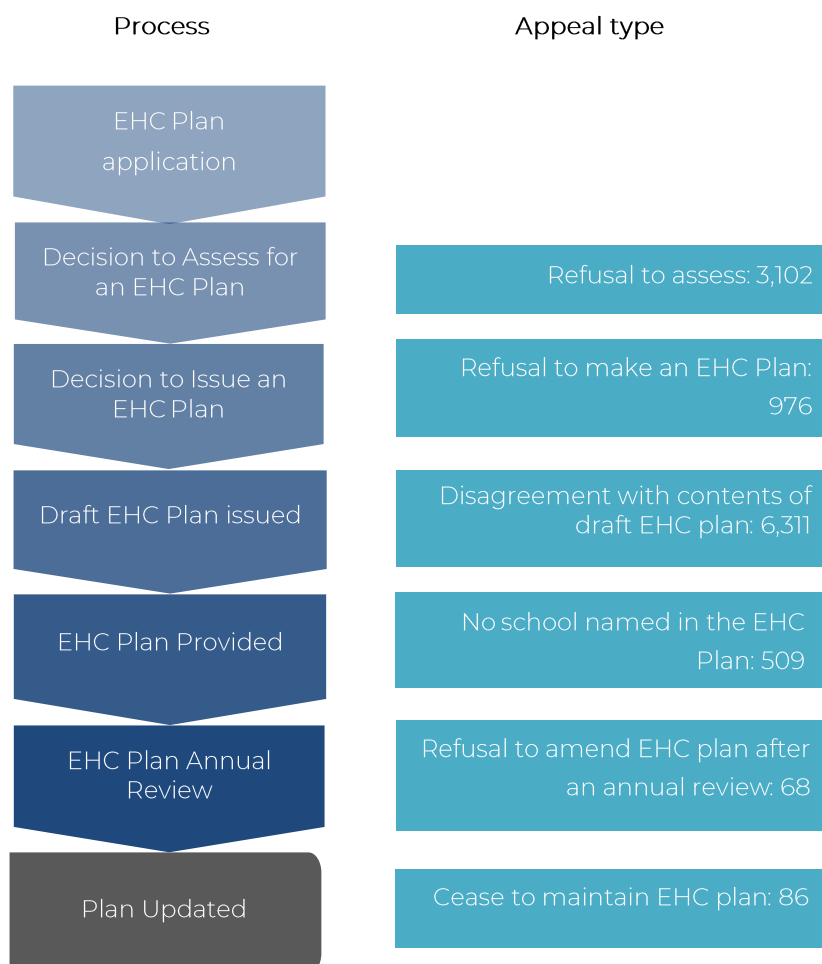
- A parent

Figure 4 shows the number of SEND tribunals in 2021-22 for each step of the EHCP journey. Of the 11,052 SEND tribunals registered in 2021-22,

roughly 3,000 related to refusals to assess, 1,000 to refusal to make a plan and 7,000 to disagreement about the content of the plan.

Figure 4: Most SEND tribunals relate to disagreements about the content of draft plans and refusals to assess

Number of SEND tribunals registered in England 2021-22, by appeal type



Notes: All figures are based on academic year, which runs 1 September to 31 August. Refusal to assess includes refusal to re-assess. Refusal to make an EHCP includes refusal to make an EHC Plan with recommendations for: health, social care, health & social care. Refusal to amend an EHC plan after an annual review includes refusal to amend an EHC plan after an annual review with recommendations for: health, social care, health & social care. Cease to maintain an EHC plan includes cease to maintain an EHC plan with recommendations for: health, social care, health & social care; and refusal to replace EHC plan after re-assessment.

Source: Ministry of Justice, Special Educational Needs and Disability Tribunal Tables, 2021-22

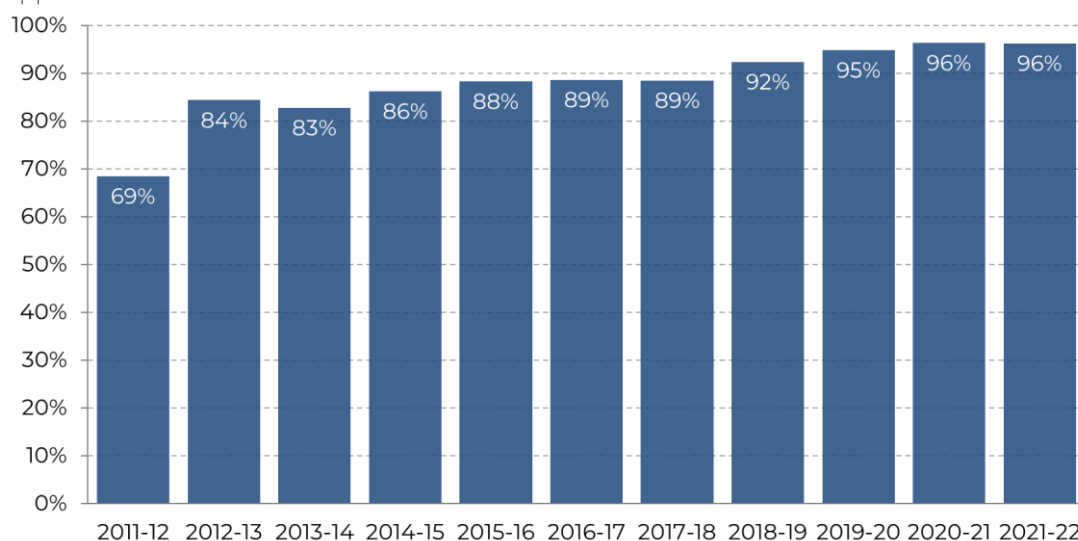
Yet almost *all* SEND tribunal hearings are decided in favour of the parent or young person challenging the local authority's decision

Proceeding with a tribunal is a costly and stressful experience for parents/carers and young people (discussed below). Yet it is

understandable that the number of appeals registered is increasing, given that almost all appeal hearings are decided in favour of parents/carers and young people.

Figure 5: The appellant win rate for SEND tribunals has increased steadily over the past decade and has been over 90% since 2018-19

Appellant win rate at SEND tribunals 2011-12 to 2021-22



Source: Special Educational Needs and Disability Tribunal Tables, Ministry of Justice, 2021-22

In 2021-22, 96% of SEND tribunal hearings were decided in favour of the parent/carer or young person challenging the local authority team's EHCP decisions.<sup>13</sup> This very high rate of decisions in favour of the appellant is not unusual for SEND tribunals, indeed, it continues the upward trajectory of such decisions which has exceeded four in five decided in favour of the appellant since 2014-15.

### A failure to get EHCPs right first time is wasting millions of pounds of public money

Local authorities are managing growing need for SEN support at a time when many are under serious financial pressure and budgets are being squeezed. Given their dual role in assessing needs and commissioning support, this could explain why local authorities are getting a growing

<sup>13</sup> Not all registered tribunals end in hearings and many are withdrawn or conceded before an appeal is heard. In 2021-22, 9,076 SEND tribunals were concluded, of which 5,600 were heard and decided by a tribunal panel, 1,035 were withdrawn and 2,441 were conceded. Of the 5,600 cases where a SEND tribunal hearing took place in 2021-22, 5,393 (96%) were decided in favour of the appellant. Source: Ministry of Justice, [Special Educational Needs and Disability Tribunal Tables](#), 2021-22



number of EHCP decisions wrong. It also explains why a growing number of parents/carers and young people feel they have no option but to take disagreements to tribunal, instead of local authorities coming to agreements with parents/carers in a more conciliatory way.

But in what may be an attempt to hold back spending on SEN support, local authorities are instead increasingly making wrong decisions and in doing so are wasting millions of pounds, and thousands of hours of staff and parents/carers' time, fighting tribunals they almost always lose.

Tribunals create direct costs for local authorities in terms of professionals' time preparing for and attending hearings, as well as His Majesty's Courts and Tribunal Service (HMCTS) which hears the tribunal case. But they also generate a range of costs for families and young people – including not only financial costs, but the costs created by the stress and uncertainty of tribunals and the delay these create in getting appropriate support in place.

The next section explores these costs in detail.

## Taxpayer costs of SEND tribunals

### The public sector wastes nearly £60 million pounds each year losing SEND tribunals

Public sector spending on SEND tribunals is split across local authorities, whose staff invest time in preparing for and attending tribunal hearings, and HMCTS who hear appeal cases.

These costs were assessed in 2017 by Government Social Research<sup>14</sup> (henceforth GSR (2017)) who were examining the costs and benefits of investing in mediation services to reduce the number of EHCP disagreements reaching tribunal. Their assessment was based on the number of hours different professionals generally spend preparing for tribunal cases, drawn from surveys of local authorities. (Almost all local authority costs are labour costs).

By applying average hourly wages, taken from the Labour Force Survey, the GSR team were able to estimate indicative total costs to local authorities for the preparation of a SEND tribunal and attendance at the hearing. PBE has updated these costs<sup>15</sup> and weighted them for complexity, as more/ less complex cases generally require a greater/lesser investment of staff time. Annex A sets out PBE's methodology in detail.

The GSR report also includes figures for the costs incurred by the courts and tribunal service (HMCTS) from hearing a typical EHCP case. HMCTS is able to 'bill' the Department for Education for relevant SEND tribunal appeals and PBE has updated this cost based on the latest agreement between DfE and HMCTS.

Based on these calculations, PBE estimates that the average cost to the public purse of a *medium* complexity case reaching tribunal hearing is nearly £9,500 (of which nearly £7,000 are local authority costs and over £2,500 are costs to HMCTS).

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<sup>14</sup> Report for the Department for Education and the Ministry of Justice, [Review of arrangements for disagreement resolution \(SEND\)](#), Cullen et al, March 2017

<sup>15</sup> PBE has updated these costs using wage inflation rates from the Labour Force Survey and applied the complexity cost and distribution reported in GSR (2017), as set out in Annex A.

However, around half of the cases reaching tribunal hearings are *high* complexity cases.<sup>16</sup> For these cases, the amount of time local authority staff spend preparing for a tribunal is around 60% higher than for medium complexity cases. Taking this and the distribution of case complexity into account, PBE estimates that the average amount of public money spent on each SEND tribunal hearing for high complexity cases is over £11,000 (of which over £8,500 are costs borne by the local authority).

Figure 6: Average cost per tribunal (weighted for complexity)



In 2021-22, a total of 5,600 cases<sup>17</sup> were heard and a decision was made and 96% were decided in favour of the appellant. On this basis, PBE estimates that in 2021-22, £59.8 million was wasted on lost SEND tribunals.

If that money was spent on providing SEND support instead, it could fund up to 9,960 SEN unit places each year.<sup>18</sup>

<sup>16</sup> GSR (2017) reports that, based on surveys of local authorities, 12% of cases reaching tribunal hearings are low complexity, 38% are medium and 49% are high complexity..

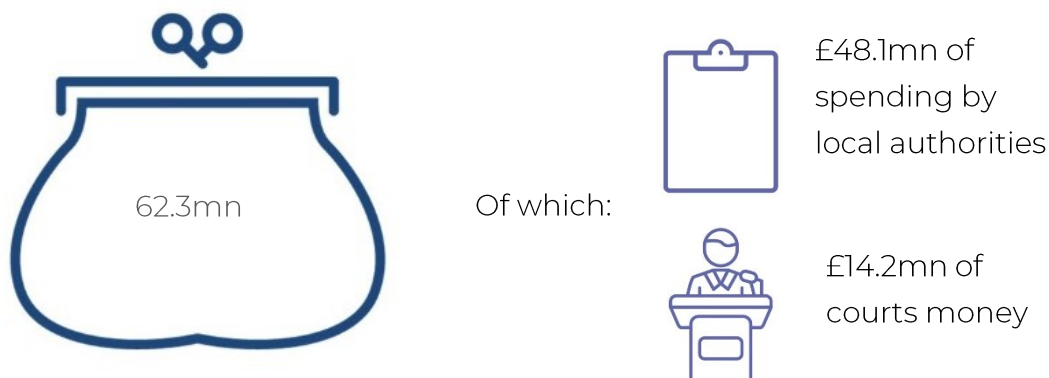
<sup>17</sup> Ministry of Justice, [Special Educational Needs and Disability Tribunal Tables](#), 2021-22.

<sup>18</sup> The government Explore Education Statistics, Special educational needs in England, notes: "SEN units are special provisions within a mainstream school where the pupils with SEN are taught within separate classes for at least half of their time. Units:

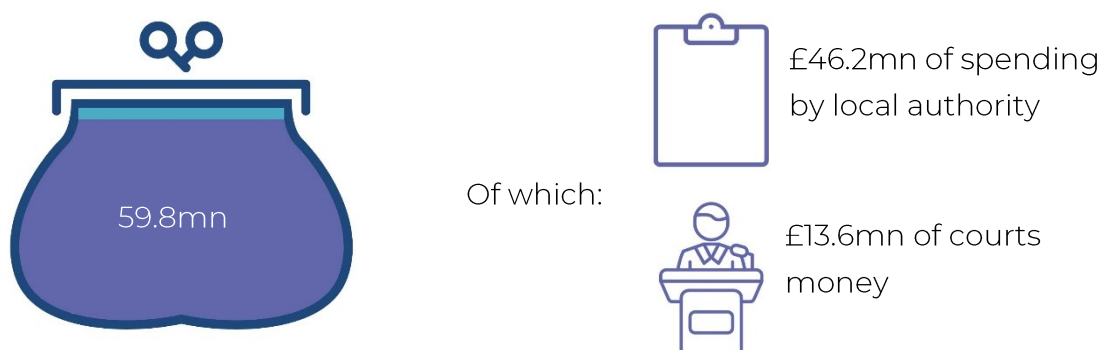
- are designated by the local authority specifically for making SEN provision, and sometimes accommodate pupils registered at other schools on a part-time basis
- receive funding of £6,000 or £10,000 per place, and usually top-up funding for any additional costs of support required by individual pupils
- cater for a specific type or types of SEN (for example autistic spectrum disorder)
- are usually for pupils with an EHC plan (but may also provide support for pupils with SEN support)."

Figure 7: Total public spending on SEND tribunals 2021-22

Total public spend on SEND tribunals: £62.3 million



Public spend on lost SEND tribunals: £59.8 million



Total public spending which includes preparation for tribunals that are registered but do not reach appeal hearing could be as high as £80 million

The cost set out in Figure 7 is the baseline estimate of spending on SEND tribunals. In addition to the 5,600 cases heard, a further 1,035 cases were withdrawn before the tribunal hearing and 2,441 cases were conceded. This could be because the local authority and parent/young person came to an agreement before the hearing took place, or because either party decided their chances of success at tribunal were not high enough to justify the cost, or stress, or attending the hearing. Due to the lack of data about the

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The estimate of 9,960 SEN unit places represents the maximum number of places that could be funded from £59.8 million, based on the lower cost of £6,000 per place and not including top up funding for additional costs.

point at which cases were withdrawn/conceded, it has not been possible to assess how much time is generally spent in preparing for a tribunal before a decision to withdraw/concede. In some cases, local authorities concede very close to the hearing date (as in Case Study 3 in the next section).

Assuming local authority staff spend half of the average preparation time on cases that are registered but do not end in a hearing increases PBE's estimate of total public sector spending on SEND tribunals to £71.1 million (of which £57 million is local authority spending). If staff spend as much time preparing for cases that do not end in a hearing as those that do, the total public sector spend would reach £80 million (of which £65.8 million is local authority spending).<sup>19</sup>

### **This represents huge amounts of pressure on teams and budgets that are already overstretched**

As set out in the previous section, councils are already under significant cost pressure to simply keep delivering the same quality and quantity of services that they have in previous years. The growing identification of SEN and the significant uptick in provision of EHCPs is creating an additional pressure, not only on budgets, but on local authority SEND teams and other SEND professionals.

Yet by getting decisions wrong, thousands of staff hours are being wasted on preparing for and attending tribunals, instead of providing much needed support to parents/carers and young people. The GSR (2017) report states that an average medium complexity SEND tribunal case takes up five to six weeks of professionals' time.<sup>20</sup>

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<sup>19</sup> In terms of distribution of case complexity, for those cases that are registered for tribunal but are concluded before the hearing stage, we have applied the distribution GSR (2017) report overall for SEND disagreements (that is, all disagreement where initial contact for formal mediation is made. Some, but not all of these cases, will go on to be registered for tribunal). The overall distribution of disagreements is: 30% low complexity, 44% medium complexity and 26% high complexity. This produces an average case cost of £5,107, if local authority staff spend as much time preparing for cases that do not end in hearings as those that do; and £2554 if they spend half as much time.

<sup>20</sup> See Tables 33 and 34, GSR (2017) which reports full case preparation for a medium complexity case takes an average of 20.3 (person) days and attendance takes average of 7 (person) days, not including the time of the tribunal panel hearing the case.

And direct public spending on SEND tribunals is only the tip of the iceberg - delaying appropriate SEN support has wider public cost implications.

The time between an initial recognition of a child's needs and having appropriate support in place is already lengthy. Fewer than half of EHCPs are delivered within 20 weeks, and this often follows what has already been a long process of assessment, as well as failures to meet a child's needs before applying for an EHCP.

Adding a potentially lengthy tribunal appeal process into this means young people can be left without appropriate supports for months. As a result, parents have reported a range of detrimental impacts to their children including falling behind at school (or in some cases, not attending school at all), becoming socially isolated, experiencing delays in their developmental progress or suffering from deteriorating physical health.

There are also impacts for wider family members. The parents interviewed for this report cited the effects of stress, uncertainty, financial pressure and time commitments in preparing for tribunal on their own mental and physical health, employment opportunities and finances, while the pressure at home can impact siblings' wellbeing, social and educational development.

*'The decision to take our local authority to tribunal was an agonising one. We knew it would be financially and emotionally draining. But after more than a year of the local authority refusing to change our son's placement, which could not meet his needs, we felt we had no choice. As expected, the process was horrendous and supremely stressful. Our local authority employed underhanded tactics to stop our son from securing a placement that could meet all of his needs. The whole process to secure a new placement took more than two years and it took a toll on the whole family. We felt we were fighting for our son's whole future. So for those two years it was the most important thing in our lives. Thankfully we had a successful outcome, but no family should have to suffer that process just to get a placement that can offer their child a suitable education.'*

- A parent



Figure 8 and Figure 9 below summarise the range of potential impacts of the delays, uncertainty, pressure and stress of SEND tribunals, along with their potential economic impacts. These logic chains are drawn from discussions with parents and carers who have experienced the EHCP application process.

Figure 8: Logic model – potential impacts and costs of SEND tribunal on a child/young person

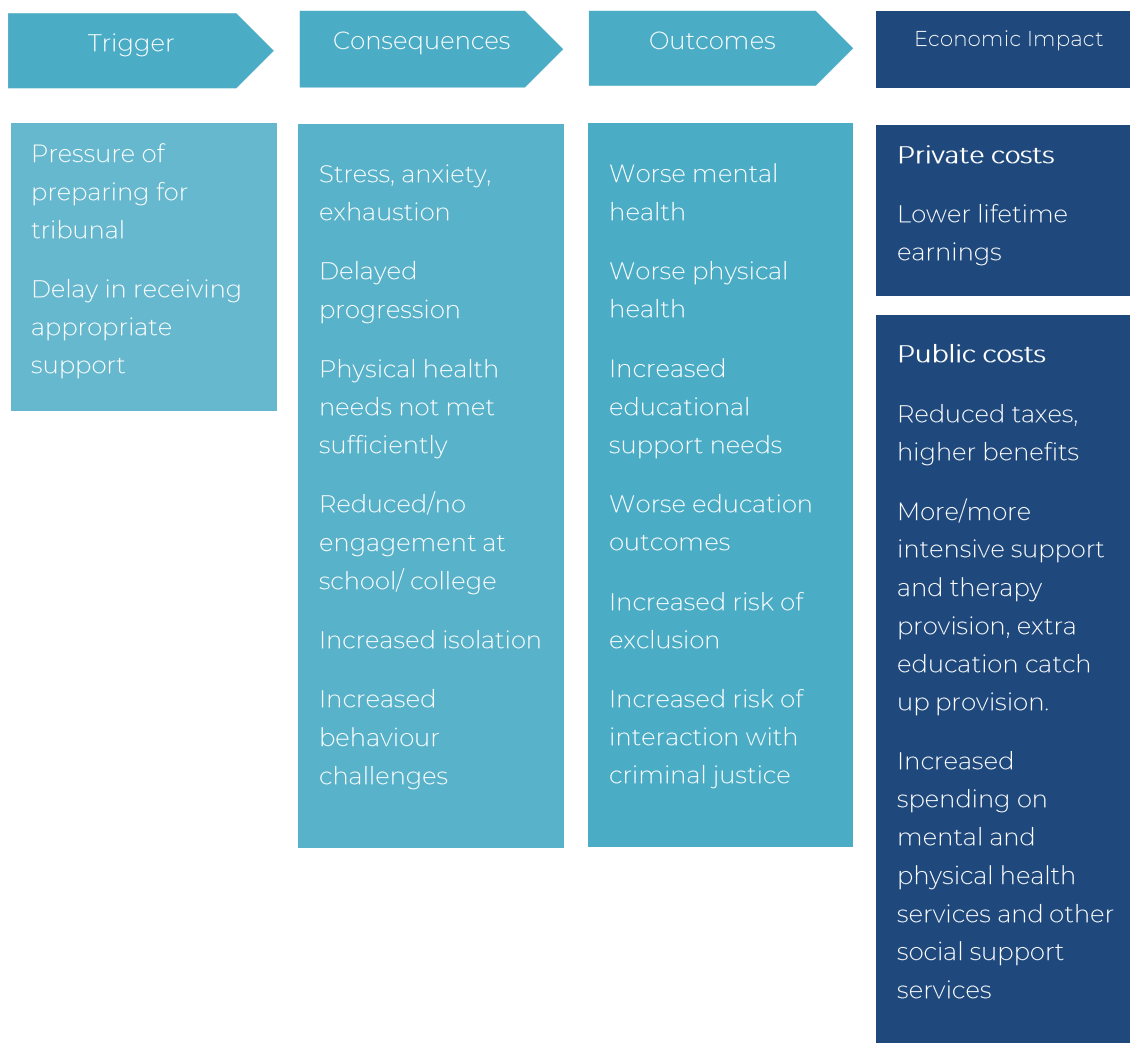
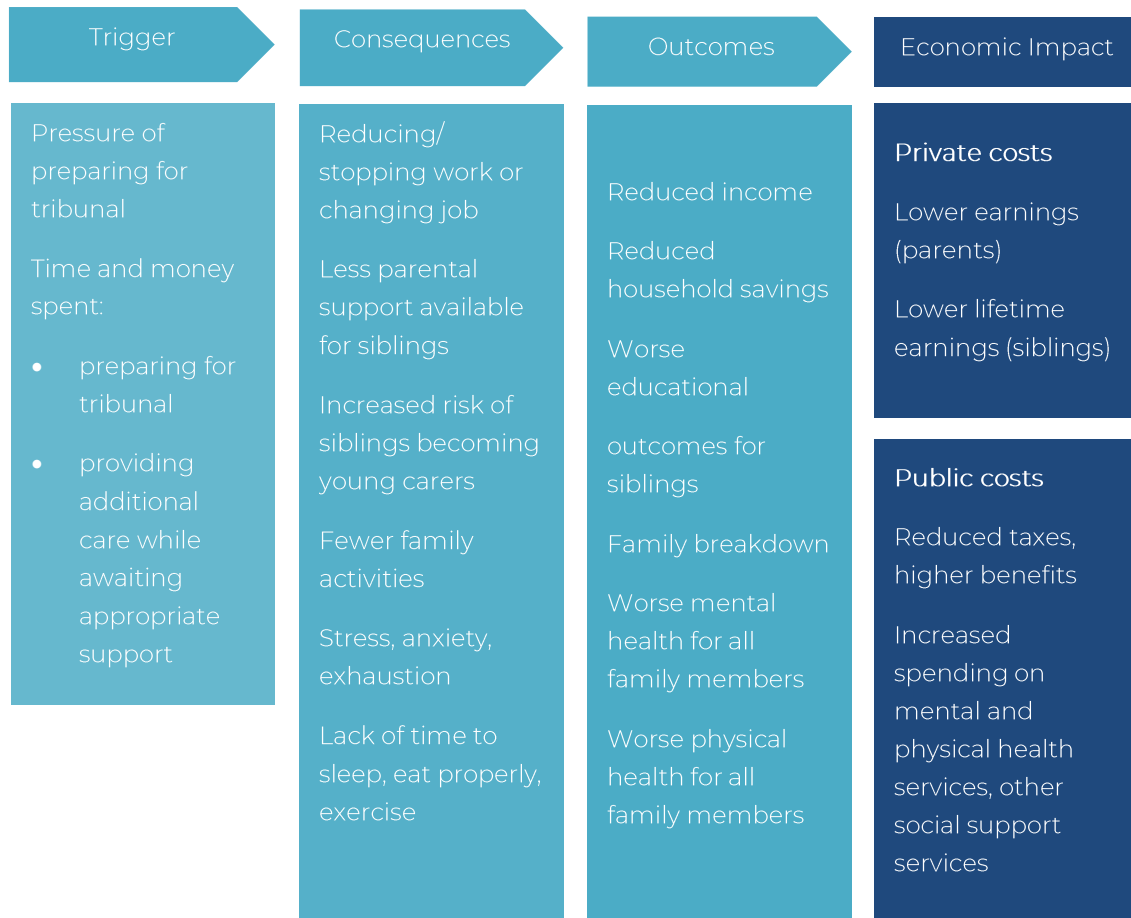


Figure 9: Logic model – potential impacts and costs of SEND tribunal on parents/carers and siblings



For children and young people seeking EHCPs, the pressure of preparing for tribunals can lead to feelings of stress and anxiety, while delays in accessing appropriate support can hinder their academic and social progress, compound isolation, increase behaviour challenges, and lead to deteriorations in physical health. In some cases, a young person may remain entirely outside the education system while the EHCP disagreement is ongoing. As a result, a young person may experience worse mental and physical health, achieve worse outcomes at school and potentially have more interactions with other public services, such as the criminal justice system. All of these outcomes have economic costs, both in terms of short-term public spending (such as increased need for mental and physical health support, educational catch up or more intensive wrap-around therapies) and long-term economic output (when worse short-term outcomes impact a young person's long term earning potential).

The impacts of SEND tribunals are not limited to the child or young person seeking support, but extend to their families and carers. Families may feel the pressure of preparing for a tribunal due to the time needed to prepare for the hearing, the complexity of the process, and the additional care they may need to provide for their child or sibling while the EHCP disagreement remains unresolved. Many families also face additional financial pressure due to the direct costs of challenging a decision at tribunal. The result is not only stress and exhaustion, which impacts family members' mental and physical health, but may mean parents/carers need to reduce their working hours or even stop working entirely. Meanwhile, pressures on time and money might mean fewer family activities and less support for siblings, increasing risks of family breakdown or leading to worse educational outcomes for siblings. Again, these factors all generate economic costs, particularly where parents/carers reduce their working hours, siblings achieve worse school grades or family members need more physical or mental health support.

It is not possible to estimate the total economic cost of these impacts, but the case studies that follow give an indication of the potential variety and scale of these costs.<sup>21</sup>

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<sup>21</sup> The economic costs cited in the case studies are taken from the following sources: Healthcare costs from the NHS [National schedule of NHS costs](#) 2021/22 and the Personal Social Services Research Unit (PSSRU) [Unit costs manual](#) 2022; Education costs from the Education & Skills Funding Agency [Funding rates and formulas guidance](#) 2023; Criminal justice costs from the Greater Manchester Combined Authority Research Team [Unit cost database](#) 2022. Other costs sources are specified as they arise in the case studies.

## Case Study 1

Jack and Alex are nine-year-old twins. Both have special educational needs and disabilities. Their parents began EHCP applications for both twins in early 2018 when both were in nursery, with Alex moving to primary school in September 2018.

For Jack, who has more complex needs, an EHCP was agreed but his school lacked the capacity to provide the level of support set out in his plan. Over the following years, Jack had many assessments of his health and educational needs, but during this time he didn't receive the support he needed - including occupational therapy, speech and language therapy and British Sign Language. In September 2021, almost four years after his initial assessments, Jack won a tribunal to receive an appropriate level of support. But the four years in which he was "left at the periphery of an oversubscribed SEN class" significantly impacted his progress, and some elements of support awarded by the tribunal panel have still not been put in place by the local authority due to a lack of available local services,

Meanwhile, Alex was not issued an EHCP until 2021. Until this point his speech and language did not progress, meaning he was isolated at school, struggling to form friendships and battling deteriorating mental health.

The period of stress and delay before both twins had appropriate support in place also had significant impacts on the parents. Both gave up work for four years to care for the twins, including taking them for assessments and providing evidence to the local authority about the extent of their needs. The stress of this period led to hypertension for one parent, while a lack of time to sleep well, eat properly or exercise contributed to a further deterioration in their physical health.

## Economic costs

Mental health treatment: Average cost of providing community/outpatient mental health support to a young person: £329-£771.

Delayed progress requiring more intensive therapy: Cost per one-to-one session: Speech and Language: £143, Physiotherapy: £132, Occupational: £168.

Physical health treatment: GP appointments: £41 per appointment, Treatment of hypertension: £425 - £2,300

Employment: Parents unable to work. Estimate based on PBE estimate of average annual household earnings for couple parents of disabled children: impact on earned income – around £30,000-£34,000 per household per year.<sup>22</sup> Impact on Income Tax and National Insurance payments – around £4,000- £8,000 per household per year.<sup>23</sup>

## Case study 2:

Calvin is 17-years-old and has complex needs. He lives at home with one parent.

Calvin has already been through the tribunal process once - in 2017, he won a tribunal case to receive appropriate support. However, once Calvin turned 16, an updated EHCP was needed to secure a post-16 educational placement. That updated EHCP has not yet been offered, meaning Calvin left school in June 2022 with nowhere to go. During the months since Calvin left school, he has become increasingly isolated and depressed.

In addition, Calvin has a variety of physical health needs, including medical support every two to three hours throughout the day and night. But because his EHCP is now out of date, the medical support Calvin receives is

<sup>22</sup> Based on PBE analysis of the Family Resources Survey, average household earned income in 2021-22 for couples with at least one disabled child. This analysis found average household income for couples with one or more disabled children to be £730. Assuming this household income is earned in an equal split between both parents and applying standard PAYE and National Insurance rates results in net household pay around £34,000 per year; if it is earned by one parent implied net pay is around £30,000 per year.

<sup>23</sup> PAYE and National Insurance payments estimates are based on PBE estimate of average household earned income for parents of disabled children. Source: [PAYE estimation calculator, HMRC](#). Income tax and national insurance estimate ranges reflect the either one parent earning the full household income or household income being earned equally by both parents.

insufficient. As a result, Calvin's mum is providing a greater proportion of his physical care, leaving her exhausted and unable to work. And because Calvin is not receiving the medical support he needs, some of Calvin's medical problems have intensified – for example, lack of physiotherapy means he has become weaker and now relies on a wheelchair.

Calvin is currently awaiting his tribunal.

### Economic cost

Mental health treatment: Average cost of providing community/outpatient mental health support to a young person: £329-£771.

Physical health treatment: GP appointments: £41 per appointment, Inpatient short stay: £985, Outpatient attendance: £235.

Provision of a wheelchair: assessment £370-£521, equipment £368-£1,193.

Employment: Parent unable to work. Estimate based on PBE estimate of average household earnings for single parents of disabled children: impact on earned income – around £15,000 per year.<sup>24</sup> Impact on Income Tax and National Insurance payments – around £1,300 per year.<sup>25</sup>

### Case study 3:

Charlie's additional needs were identified early on. He initially had an EHCP with 20 hours of support at school and the local authority's disabled children's team provided 15 hours at home, but this was removed entirely when he was eight-years-old. As a result, over the next two years, his behaviour became more challenging and his existing school was no longer able to meet his needs.

Charlie's mum found an alternative appropriate school for Charlie, but, as it was in another borough, the whole family, including Charlie's three siblings,

<sup>24</sup> Based on PBE analysis of the Family Resources Survey, average household earned income in 2021-22 for couples with at least one disabled child. This analysis found average earned income for single parents with one or more disabled children to be £320. Applying standard PAYE and National Insurance rates results in net household pay of £15,339 per year.

<sup>25</sup> PAYE and National Insurance payments estimates are based on PBE estimate of average household earned income for parents of disabled children. Source: [PAYE estimation calculator, HMRC](#). Income tax and national insurance estimate ranges also reflect either one parent earning the full household income, or household income being earned equally by both parents.



relocated. On arrival in the new local area, Charlie was refused a place in the appropriate school his mum had identified and turned down for six further schools.

Charlie was expected to attend a new mainstream school, which was still unable to meet his needs. After the local authority refused to reissue his EHCP, Charlie spent over a year staying at home with his mum. Charlie's mum began the tribunal process and one week before the tribunal hearing date, the local authority conceded and awarded Charlie a place in the special school he had been refused a place at the previous year.

Through this period of waiting for an appropriate school place, Charlie became increasingly stressed and his behaviour became more challenging and erratic. He was admitted to hospital three times, once by ambulance, and the police were called out more than 10 times. While Charlie was eventually awarded an appropriate school place, he was still awaiting a social care assessment and appropriate support at home.

The lack of home-based social care support provision for Charlie made it challenging for his mum to manage his risky behaviour at all times. As a result, the local authority considered placing Charlie with a foster family, causing severe emotional distress to his mum. The impact of this on Charlie's family was substantial. During the two years before an appropriate school place was awarded, Charlie's mum was unable to work due to Charlie's care needs, putting the family under financial pressure.

Tragically the following year, Charlie had a fatal fall. The inquest found this was a preventable death, due to lack of support for Charlie and his family. Charlie's death had a profound and extensive personal impact on Charlie's mum, siblings and wider family.

In addition to this personal loss, the economic impact of Charlie's death on his family is substantial. Charlie's three siblings experienced anxiety and declining mental health as a result of the stress and each had dropped several academic grades at school.

## Economic cost

Emergency services: Ambulance call out and convey to hospital: £390 per incident.

Police call out: £92 for two hours of police time.

Mental health treatment: Average cost of providing community/outpatient mental health support to a young person: £329-£771 (per person).

Dropping academic grades: average loss of lifetime earnings from dropping one grade on one GCSE: £9,596 (present value).<sup>26</sup>

Cost of a foster care placement (if this option had gone ahead for Charlie): £33,000 per year.<sup>27</sup>

Employment: once Charlie's mum returned to work, she earned around £20,000 per year. Impact on tax payments – around £3,000 per year.

## Many families also incur significant financial costs from preparing for tribunals

Preparing for a tribunal can be a very time-consuming, complex and potentially costly process for families. The case studies above outlined some impacts, and their associated costs, families incur as a result of EHCP delays and SEND tribunals. Families also often incur direct financial costs from their decision to take a disagreement to tribunal. The authors of GSR (2017) interviewed 50 families who have experienced the SEND tribunal process. They reported spending an average of 13.5 hours per week, for an average period of 25.6 weeks, preparing for a tribunal.<sup>28</sup> This time, the “opportunity cost” of preparation, was estimated to be worth £1,299 per family (in 2017).

In addition, families may incur a range of direct financial costs, including costs of education while a child is out of school, costs of private reports to

<sup>26</sup> Department for Education, [GCSE attainment and lifetime earnings](#), July 2021. The value varies by GCSE subject and it is not directly additive (i.e., while this is the average value of lifetime earnings gained/lost by a one grade shift in one GCSE subject, the value of shifting two grades, or shifting a grade in two subjects, is not twice £9,565). ‘Present value’ means this figure is quoted in 2022 prices – in other words, what you could buy with £9,596 in 2022.

<sup>27</sup> Source: PBE analysis of [Department for Education data](#).

<sup>28</sup> GSR 2017, Annex 8 (A8.4.1)

support the family's case (e.g., from an educational psychologist) and costs of third-party support in preparing for the tribunal and attending the hearing (e.g., legal representation). Some families will not incur additional costs - for example, some will be eligible to receive legal aid. However, of the 19 families interviewed by the GSR team in 2017 who did incur costs, the average direct financial cost per family was £4,779. Such costs may also apply to families who fully prepare for a tribunal hearing, only for the local authority to concede the case shortly before the hearing date.

The small sample behind these figures (a total of 25 families provided cost information) means we cannot extrapolate them to population level. However, if these findings are indeed representative, this suggests tens of millions of pounds are being spent by families fighting local authority EHCP decisions each year.

*"The first thing we were asked to do for the tribunal was to submit a chronologically-ordered packet of information – school reports, annual reviews, medical letters, therapy reports. Show me the SEN family that has this all carefully organised, categorised and ready to deliver digitally as opposed to all flung together in a ten-foot high pile somewhere. We had to liaise with each specialist, organise observation sessions at home and school, proofread and approve their reports. The local authority was offering alternative provisions to the one we had requested but insisted we visit all of their suggestions to rule them out. I felt all the time and mental energy this took meant I was not giving my child the parental care and attention he needed. The stress on my marriage was enormous. Going to tribunal should be up there with divorce and moving house as one of life's major stressors."*

- A parent

## The wider economic benefits of providing appropriate and timely SEND support

Providing appropriate support for a young person with special educational needs and disabilities so that they can achieve their potential is a cost to the public purse, but it is also an investment.

Over the past decade, the number of disabled people in employment has increase significantly – over 2 million more disabled people are employed now than they were a decade ago.<sup>29</sup> Bringing people into the labour market benefits the economy by expanding the UK's productive capacity. It also significantly benefits individuals, not only through its impact on incomes, but also on how people feel - there is strong evidence that being in work positively contributes to people's mental health and wellbeing.<sup>30</sup>

In this final section of the report, we consider the impact of SEND support and tribunals on the employment prospects of both disabled children/young people and their parents and carers.

### Disabled people are under-represented in the UK labour market, but providing appropriate support could reduce the employment and earnings gaps

Disabled people in the UK are more than twice as likely as non-disabled people to be unemployed<sup>31</sup> and for those in work, disabled people earn less on average than non-disabled people. The disability pay gap (the gap between median pay of disabled employees and non-disabled employees) was 13.8% in 2021.<sup>32</sup>

The earnings gap varies by types of condition or impairment. In 2021, Office for National Statistics (ONS) data shows that disabled employees with autism had the largest pay gap (their median pay was 33.5% less than the

<sup>29</sup> Department for Work and Pensions, [Employment of disabled people 2022](#), January 2023

<sup>30</sup> Waddell and Burton, [Is work good for your health and wellbeing?](#), 2006

<sup>31</sup> The unemployment rate for disabled people was 7.2% in July-September 2022, compared to 3.2% for non-disabled people, while the economic inactivity rate of disabled people (where the person self-reports that they are not in or looking for work) was 43.3%, compared to 14.8% for non-disabled people. Source: [Employment of disabled people 2022](#)

<sup>32</sup> Office for National Statistics, [Disability pay gaps in the UK: 2021](#), April 2022

median pay of non-disabled people), followed by people with severe or specific learning difficulties (who earned on average 29.7% less).<sup>33</sup>

Much of this earning gap can be explained by differences in qualifications and in types of occupation people undertake. Disabled workers are less likely to be in higher-skilled occupations, such as managerial posts, than non-disabled workers,<sup>34</sup> or have comparable qualifications, which drives down their average earnings. For people with autism, or learning difficulties, as their main impairment, the difference in their average pay, compared to non-disabled people, reduces by 13.7 percentage points and 25ppts respectively when controlling for differences in occupation and qualification.<sup>35</sup>

As such, supporting more people with special educational needs and disabilities to achieve their academic potential, and opening up a wider range of employment prospects, is an important factor in bringing their average earnings closer to those of non-disabled people. This has significant, long-term benefits for the public purse. In 2011, the National Audit Office (NAO) estimated that supporting someone with a learning difficulty into employment could reduce public spending by around £170,000 over their lifetime, as well as increasing that person's income.<sup>36</sup>

SEND support is not solely about improving employment prospects. It also increases a young person's ability and confidence to participate in the wider community and live independently as an adult. A 2017 survey<sup>37</sup> of parents and young people about the impact of EHCPs found that more than half expected the ECHP to increase a young person's chances of living independently in adult life.<sup>38</sup> This also has significant impacts on public

<sup>33</sup> It is worth noting in this context that half of SEND tribunals registered in 2021-22 related to children or young people with Autistic Spectrum Disorder and one in five to children or young people with learning difficulties.

<sup>34</sup> Though the proportion of disabled workers in these occupations has increased in recent years from 37.5% in 2013/2014 to 43.8% in 2021/2022

<sup>35</sup> Office for National Statistics, [Disability pay gaps, regression models and adjusted pay gaps, UK](#), April 2022

<sup>36</sup> National Audit Office, [Oversight of special education for young people aged 16-25](#), 2011

<sup>37</sup> Government Social Research, [Experiences of Education, Health and Care plans: a survey of parents and young people](#), 2017

<sup>38</sup> Over half of parents and young people agreed that the EHC plan will improve the child/young person's chances of fully participating in the wider community (57% agreed); of independent living in adult life (55% agreed); and identifying their aspirations for the future (53% agreed). Nearly half (47%) also agreed that it would improve their chances of getting paid or unpaid work.

spending. For example, with reference to young people with moderate learning difficulties alone (EHCPs cover a much wider range of conditions), the NAO's 2011 report states:

*"We estimate that the cost to the public purse of supporting a person with a moderate learning disability through adult life (16–64) is £2–3 million at today's prices. Equipping a young person with the skills to live in semi-independent rather than fully supported housing could, in addition to quality-of-life improvements, reduce these lifetime support costs by around £1 million".*

- Oversight of special education for young people aged 16–25, National Audit Office, 2011

### Parents of disabled children are less likely to be in work than parents of non-disabled children

SEND tribunals can take a heavy toll on parents of disabled children and in some cases prevent parents from working, whether due to the day-to-day care needs they are providing their child, while appropriate support is still forthcoming, from the additional time pressure of preparing for a tribunal, or due to the exhaustion and stress that many parents describe while awaiting a tribunal hearing.

This is an additional pressure on a group of people who are already under-represented in the labour market, compared to parents of non-disabled children.

PBE has reviewed data in the Family Resources Survey (FRS) from 2021-22 to compare employment outcomes for parents of disabled and non-disabled children. Figure 10 below sets out the proportion of families who are in work (defined as at least one parent working at least part-time).

Overall, the analysis finds that families caring for non-disabled children are more likely to be in work than families caring for disabled children, in line with other research.<sup>39</sup>

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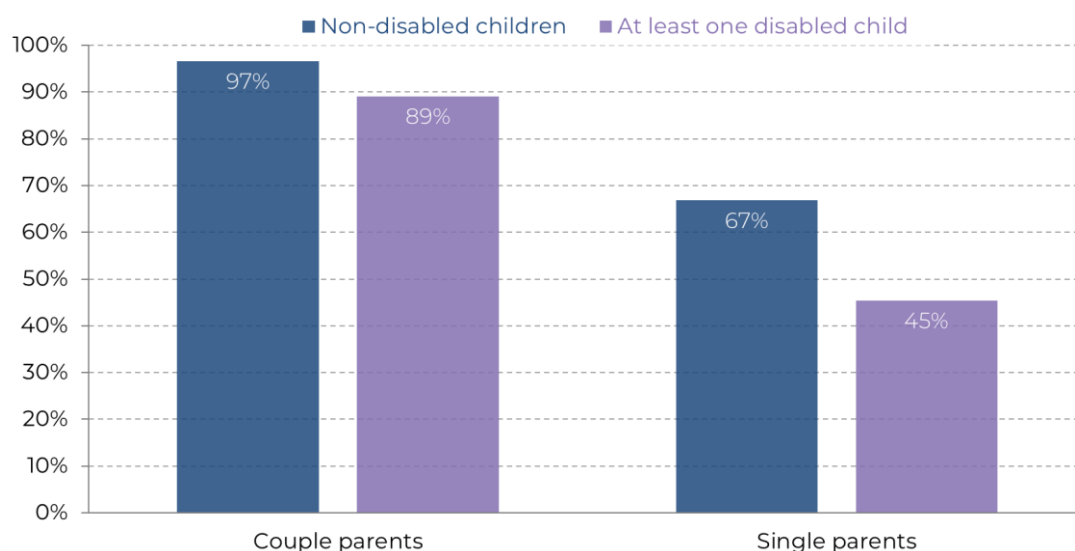
<sup>39</sup> See for example: Stabile and Allin, *The Economic Costs of Childhood Disability*, 2012; Kuhlthau and Perrin, *Child Health Status and Parental Employment*, 2001; Wondemu, Joranger, Hermansen & Brekke, *Impact of child disability on parental employment and labour income: a quasi-experimental study of parents of children with disabilities in Norway*, 2022

For couples, there is a 7.5ppt difference in the proportion of families that are in work (96.6% of couple families with non-disabled children are in work, compared to 89.1% of couples with disabled children).

For single parents, the difference is even more striking. Overall, 66.8% of single parents with non-disabled children are in work, while 45.4% of those caring for disabled children are in work.

**Figure 10: Families caring for non-disabled children are more likely to be in work than those caring for disabled children**

Percentage of benefit units with dependent children where at least one parent is in at least part time work, split by those caring for at least one disabled child and those caring for only non-disabled children



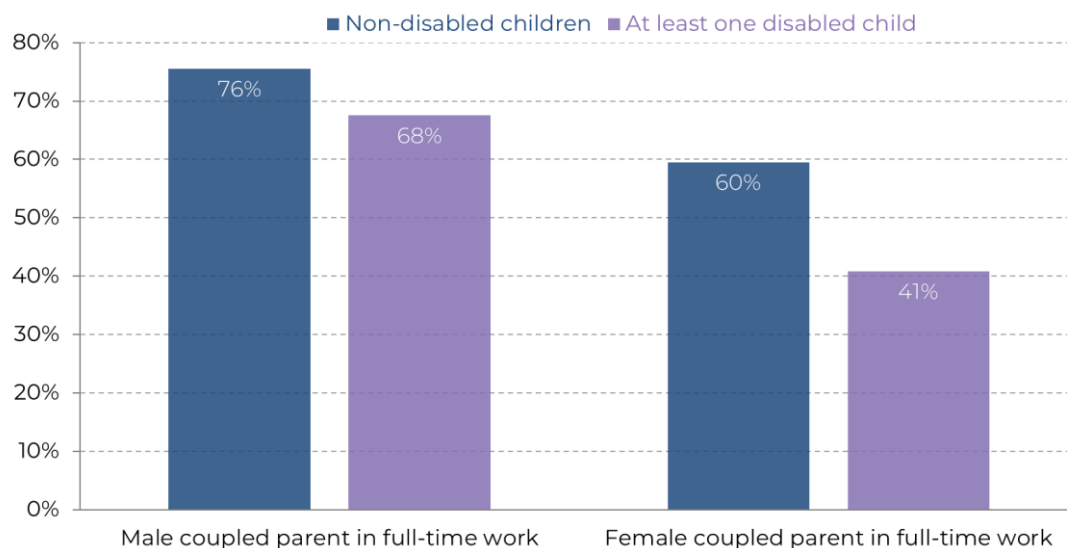
Notes: 'Benefit unit' is defined in Annex B. 'Some work' includes all of the following: One or more full-time self-employed, Single/couple all in full-time work, Couple, one in full-time, one part-time, Couple, one full-time, one not working, No full time, one or more part-time.'

Source: PBE analysis of Family Resources Survey, 2020-21

Splitting this analysis by gender, as set out in Figure 11 below, highlights that for couple parents in particular, it is women's employment status that is most impacted by caring for a disabled child. Three –in five (59.1%) mothers of non-disabled children in couples are in full-time work, compared to two–in five (40.8%) caring for disabled children.

Figure 11: Couple parents of disabled children are less likely to be in full time employment than couple parents of non-disabled children

Percentage of coupled parents of disabled / non-disabled children in full-time work, by sex



Notes: Coupled female parents with at least one disabled child 6.5% self-employed and 6.7% part-time work. Coupled female parents with non-disabled children 7.7% self-employed and 3.9% part-time work, coupled male parents with at least one disabled child 14.2% self-employed and 0.8% part-time work. Coupled male parents with non-disabled children 15.3% self-employed and 0.4% part-time work.

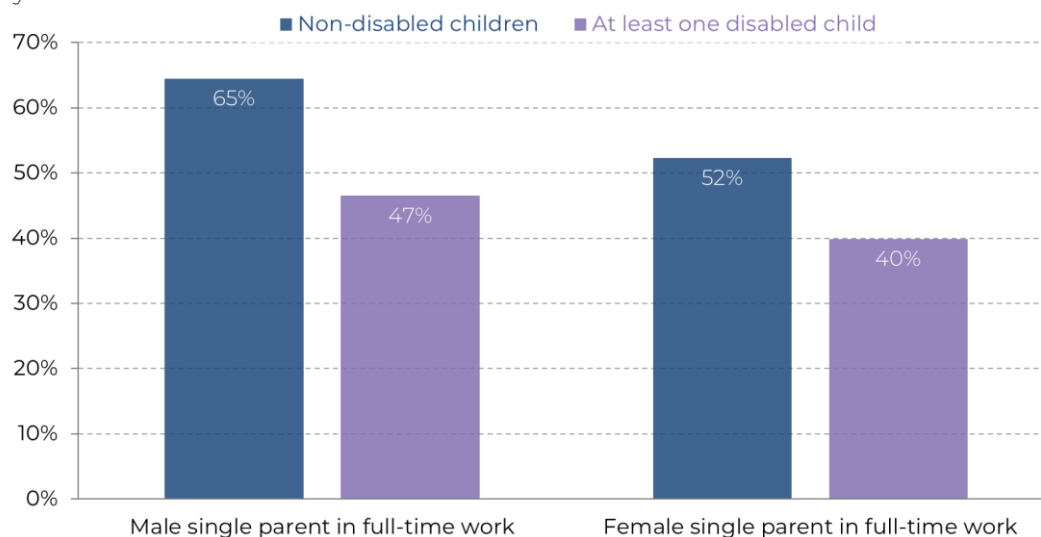
Source: PBE analysis of the Family Resources Survey, 2021-22

For single parents, both men and women are much less likely to be employed while caring for a disabled child, compared to single parents of non-disabled children. It is important to note however that results for male single parents are based on small sample sizes, which mean they should not be considered as representative of the wider population.



Figure 12: Single parents of disabled children are less likely to be in full time employment than single parents of non-disabled children

Percentage of single parents of disabled / non-disabled children in full-time work, by sex



Notes: The sample sizes for single male parents are very small: 64 single male parents of non-disabled children and 17 single male parents of disabled children. As such these results should not be considered representative of the wider population. Female single parents with at least one disabled child 2.4% self-employed and 1.8% part-time work. Single female parents with non-disabled children 5% self-employed and 5.7% part-time work, single male parents with at least one disabled child 10.9% self-employed and 8.4% part-time work. Single male parents with non-disabled children 10% self-employed and 4.9% part-time work.

Source: PBE analysis of the Family Resources Survey, 2021-22

Differences in employment rates between parents of disabled/non-disabled children can be explained in part by differences in the proportion of parents who are caring for dependent children. In particular, differences in rates of people being 'unoccupied under retirement age' (which includes those caring for dependent children) are much higher for single parents caring for disabled children. Employment differences are also partly explained by differences in long term sick rates, which are higher for parents of disabled children compared to other parents, particularly for women in couples.<sup>40</sup> PBE's analysis of the FRS suggests that more than half of disabled children have at least one disabled parent - this is likely to reflect the hereditary nature of some conditions, but may also reflect the

<sup>40</sup> Full results are set out in Annex B.

impacts of the stress and exhaustion, as illustrated in the earlier case studies, that can result from caring for a disabled child.

### Parents of disabled children who are in work are likely to be earning less than parents of non-disabled children

Families caring for disabled children often face a range of additional costs as a result of their child's additional needs. For example, a 2022 poll of over 4,000 families caring for disabled children<sup>41</sup> found that three quarters of families reported having to buy specialist goods and services, such as specialist play equipment or private therapies, while almost all reported having to spend more on regular costs (such as clothing, groceries and hygiene products) due to their children's conditions. The same survey found that nine in ten families caring for disabled children reported falling behind on regular household bills, four in five reported being in debt and more than half of parents and carers reported cutting back on meals to provide enough food for their children.

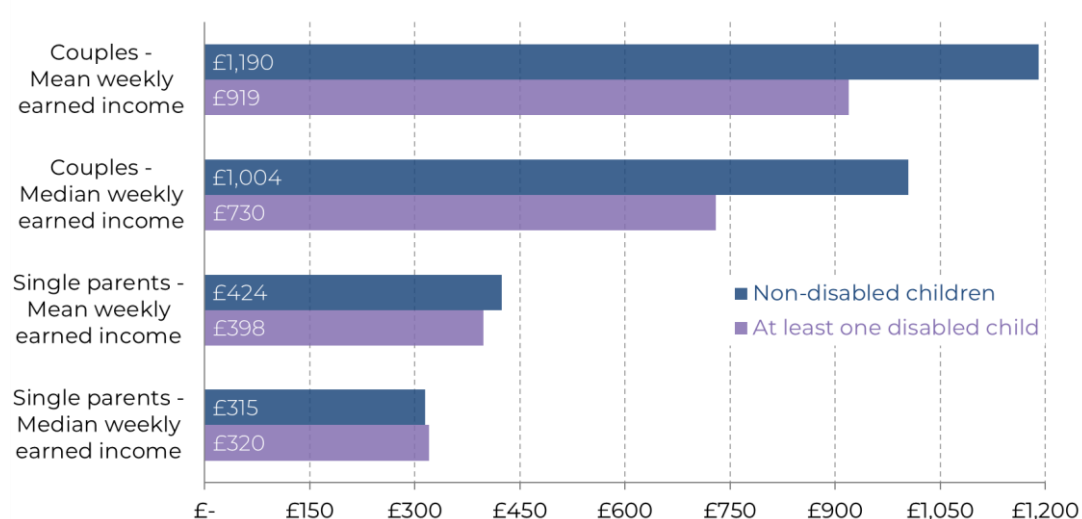
At the same time, PBE analysis of the FRS highlights that, of those who are in work, couple parents of disabled children earn, on average, £274 less from work each week than couples with non-disabled children.

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<sup>41</sup> Family Fund, [The Cost of Caring](#), October 2022

Figure 13: On average, couples with disabled children who are in work earn less from employment than couples with non-disabled children,

Mean and median gross weekly earned income by family type, of those in work



Notes: The analysis excludes all families earning zero (i.e., those not in work) – meaning the average weekly earnings cited in the chart reflect the average gross weekly earnings of those who are in work. Including those not in work would, for example, generate a median gross weekly earned income of £0 for single female parents of disabled children, as more than half of this group are not in work. Median is the more appropriate measure of “average” income in this case, because mean considers extremes (for example, a small number of people earning very large salaries can skew the mean upwards). However, we have also reported the mean here to illustrate not just average earnings (best illustrated with the median), but also the likelihood of earning higher salaries (better illustrated by the mean). This analysis is not amended to consider differences in household size or composition, known as “equivalised” household income. This is because the analysis is focused on engagement in the labour market, rather than how households are able to manage on varying levels of income. However, a full discussion of how these results would be impacted by taking household size or composition differences into account is discussed in Annex B.

Source: PBE analysis of the Family Resources Survey, 2021-22.

Meanwhile, more than half of single parents of disabled children are not in work at all and therefore have no earned income. Of those that are in work, their average weekly earned income is very close to that of other single parents, which is likely to be explained by bunching around the minimum wage (i.e., that many such parents are earning similar wages at the bottom of the pay scale). However, mean income is higher for single parents of non-disabled children, which demonstrates the greater earning potential realised by some such parents, compared to single parents of disabled children.

Caring for a disabled child is one of many factors that could influence a person's employment status and earnings. Other factors include: differences in parents' qualifications, occupation, location of residence or children's ages. Perhaps most importantly, the analysis above does not control for disability status of parents, which may be important given the hereditary nature of some disabilities. Within the FRS sample PBE has analysed, around half of the disabled children in the sample had at least one disabled parent.

Controlling for location of residence, housing tenure and the presence of a disabled adult in the household, PBE regression analysis finds that having a disabled child does have a statistically significant, negative impact on the likelihood of being in work, compared to parents of non-disabled children. This means that holding these other factors constant, having a disabled child is associated with a reduction in the likelihood of participating in the labour market. However, the analysis also highlights that having a disabled child has a much smaller impact on employment status than other factors, particularly housing tenure and disability status of adults in the household.

Annex B includes the full regression analysis results.

## Conclusion

When the government introduced EHCPs, they were widely regarded as a positive step in the way support for young people with special educational needs and disabilities is coordinated and delivered. Yet their delivery has been hampered by lack of funding and pressure on councils and schools. The result has been a 'nightmare' of bureaucracy, delay and distress for the parents, carers, young people and children dependent on a system that seems, to many, designed to make their journey as difficult as possible.

As a result, there has been a huge increase in the number of disagreements being taken to tribunals. In 2021-22 more than 11,000 SEND tribunal cases were registered. The government wasted nearly £60 million on lost cases, enough money to fund up to 9,960 SEN unit places.

Yet this could be the tip of the iceberg in terms of the public spending impacts of EHCP disagreements. Delaying the provision of appropriate SEND support impacts young people and their families, leading to deteriorating mental and physical health, worse educational outcomes and potentially taking parents out of the labour force – all of which have impacts on the public purse. Meanwhile, many families also incur significant financial costs from challenging local authority decisions at tribunal.

In the longer term, investing to allow each young person with special educational needs and disabilities to achieve their full potential has wider economic benefits, from increasing their opportunity to participate in the labour force, to increasing the likelihood they can grow up to live independently. Meanwhile, ensuring parents of disabled children do not face further barriers to participating in the labour market has both economic and wellbeing benefits, which are particularly important for families who are already often managing both financial pressure and stress.

Instead of fighting parents, carers and young people in tribunals, the government should look for opportunities to invest the £60 million that it wastes in lost SEND tribunal cases into providing the support a growing number of young people and their families so desperately need, helping them to flourish.

## Annex A: Tribunal cost estimated methodology

This annex provides additional details of the calculations made to estimate the cost to the public purse of special educational needs and disabilities (SEND) tribunals in 2021-2022.

The cost estimates for SEND tribunals are based on methodology used by Government Social Research (GSR) in a report for the Department for Education (DfE) and the Ministry of Justice (MoJ) in March 2017, *Review of arrangements for disagreement resolution (SEND)*, Cullen et al – henceforth GSR (2017).<sup>42</sup>

The GSR team considered three elements of tribunal costs in their report: (i) the cost to local authorities of preparing for and attending tribunals; (ii) the cost to Her Majesty's Courts and Tribunal Service (HMCTS) of hearing the tribunal cases and making decisions; (iii) the direct and opportunity costs to parents of preparing for and attending tribunals. In this report, Pro Bono Economics (PBE) has updated the GSR (2017) estimates for elements (i) and (ii) – the costs to local authorities and the costs to HMCTS.

In our calculations, we have assumed that the GSR methodology remains accurate and that the amount of time professionals spend working for local authorities on typical SEND tribunal cases remains the same as it was in 2016-17, when the GSR paper was written.

### Local authority costs

#### Step 1: Updating salary cost estimates

To produce the estimates of local authority costs, the GSR team surveyed local authorities to understand average spending on preparing for and attending SEND tribunals. The survey included questions about which professionals were involved and the average time each professional spent in preparing for and attending medium complexity SEND tribunals. The survey asked about how this time varied for high/low complexity cases and

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<sup>42</sup> The full report can be accessed here: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/603487/CEDAR\\_review.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/603487/CEDAR_review.pdf)

the average spread of case complexity. The survey also asked local authorities about any additional non-salary costs incurred.

GSR (2017) applied average salaries, taken from the Labour Force Survey (LFS) by job role, to the survey results (which set out average time spent, per professional, preparing for and attending SEND tribunal). This information was used to estimate average local authority salary costs. PBE has increased these cost estimates in line with average salary increases between 2017 and 2022, according to standard occupation classification (SOC) code groupings in the LFS. Wage inflation rates varied by LFS unit, but overall this implied a 9% increase (in cash terms) in local authority salary spend associated with SEND tribunals between 2016 and 2022. [Table 1](#) below sets out the original GSR estimates of total staff costs for preparing for and attending SEND tribunals, alongside PBE's update staff cost estimates.

**Table 1:** Estimated salary costs per medium complexity SEND tribunal

	Preparing for tribunal		Attending tribunal hearing	
	Salary cost estimates 2017 (£)	Updated salary cost estimates 2022 (£)	Salary cost estimates 2017 (£)	Updated salary cost estimates 2022 (£)
LA SEN officer	1314	1458	161	179
LA SEN team manager/ SEN manager/senior officer/Head of SEN	35	38		
LA SEN case work officer	24	28		
Educational psychologist	560	574	282	289
Legal representative	575	589	278	285
Administrative support	432	509		
Occupational therapist	28	34	33	40
Speech and language therapist	40	48	36	43

SEN Coordinator	42	47	174	196
LA head of SEN	38	41		
Head teacher	36	41	41	46
Head teacher of proposed school			41	46
Head of autism unit			12	12
Health care representative	29	28	29	28
Social care representative	30	33	30	33
Social worker	20	22	33	37
School representative	96	108	41	46
Professional/expert witness			45	45
ASD specialist/specialist teacher			£12	14
<i>Sub-total labour costs</i>	3299	3599	1248	1339
<i>Sub-total labour costs (add in 25% on-costs)</i>	4124	4499	1560	1674

Notes: 'Salary cost estimates' are derived from average number of hours spent preparing for/attending tribunals (taken from the GSR survey), multiplied by average hourly wages (taken from the LFS). We were unable to identify appropriate SOC codes for Head of Autism Unit, ASD Specialist and Professional/expert witness. Given the associated costs for these roles is low, and the variation in average wage increases across the different SOC units assessed, we have maintained the 2017 estimates for these categories.

Source: GSR 2017 Tables 33 and 34. PBE update of these figures using Labour Force Survey 2022.

## Step 2: Updating direct cost estimates

The GSR (2017) local authority survey asked respondents to estimate any additional, direct costs associated with SEND tribunal preparation and attendance. These costs were relatively small - £258 in legal fees and £5 in overheads for the preparation period and £303 in legal fees and £49 in travel and subsistence costs for attending the hearing.

PBE has increased these costs in line with inflation and added them to the updated salary costs. This generates a total updated cost estimate of a medium complexity case for 2022 as set out in [Table 2](#) below.



Table 2: Estimated local authority costs per medium complexity SEND tribunal

Estimated local authority cost per medium complexity case	
Preparation	£4499 (staff costs) + £318 (direct costs) = £4,816
Hearing attendance	£1674 (staff costs) + £425 (direct costs) = £2,099
Total average local authority cost per medium complexity SEND tribunal case: £6,915	

Source: PBE analysis

### Step 3: Amending costs to take into account complexity

Local authorities responding to the survey in GSR (2017) reported that on average high complexity cases cost 59% more than medium complexity cases, while low complexity cases cost 31% less.

They also estimated the distribution of high/medium/low complexity cases where disagreements arise (those cases where contact for formal mediation is made, some of which will go on to be registered for tribunal) and for those cases that end in a tribunal hearing, set out in Table 3 below.

Table 3: Estimated proportion of cases and changes to case cost, by complexity (Table 40 of GSR (2017))

	Low	Medium	High
Overall distribution of cases	0.3	0.44	0.26
Proportion of cases terminating in a tribunal hearing	0.12	0.38	0.49
Change in costs	-31%		+59%

Source: GSR (2017) Table 40

Applying these changes in cost to the estimates in Table 2 gives us cost estimates for cases of different complexity, as set out in Table 4 below.

Table 4: Average costs for local authorities of SEND tribunals that conclude in a hearing, different complexity levels

	Low	Medium	High
Average local authority cost per SEND tribunal case	£4,772	£6,915	£10,996

Source: PBE analysis

Finally, we spread these costs based on the estimated likelihood of low/medium/high complexity cases to estimate an overall average cost per tribunal.

In doing so, we have used the “proportion of cases terminating in a tribunal hearing” figures to estimate the average cost of preparing for and attending a tribunal where a decision is made (i.e., for the 5,600 cases that ended in a hearing where a decision was made in 2021-22).

On average, there is a 12% chance of a case being low complexity, 38% chance of it being medium and 49% of it being high. We therefore estimate the overall average cost to a local authority of a SEND tribunal case that terminates in a hearing as:

$$(\pounds4,772 \times 0.12) + (\pounds6,915 \times 0.38) + (\pounds10,996 \times 0.49) = \pounds8,588$$

This generates estimates of the average cost per case that terminates in a tribunal hearing for local authorities, weighted for complexity, as **£8,588**.

For those cases that were concluded without a hearing (i.e., for 3,476 cases where the case was withdrawn/conceded before a hearing), we have used the “overall distribution of cases” figures for complexity distribution. It is worth noting that in GSR (2017), the “overall distribution of cases” proportions relate to all cases where disagreement arises and formal mediation is offered, not all of which are then registered for tribunal. However, as there is no data on the complexity distribution of cases that are registered for tribunal but are resolved before a hearing, we assume that this follows the overall distribution of cases.

We take the average local authority cost of preparing for a medium complexity tribunal (set out in Table 2), £4,816, and apply the cost amendments and complexity distribution set out in [Table 3](#).

$$(\pounds4,816 \times 0.69 \times 0.3) + (\pounds4,816 \times 1 \times 0.44) + (\pounds4,816 \times 1.59 \times 0.26) = \pounds5,107$$

This generates an estimate of the average cost per tribunal registered that does not end in a hearing of **£5,107**. HM Courts and Tribunal Services costs

GSR (2017) examined HMCTS costs two ways. First they used a bottom-up approach of activity-based costing. They did this by estimating SEND

tribunal preparation and hearing time per professional on the hearing panel, and applying LFS average salary data to estimate overall salary costs. Secondly, they took a top-down approach, using the costs set out in a Memorandum of Understanding between HMCTS and DfE, which allowed HMCTS to reclaim costs from DfE for relevant SEND tribunals. These two approaches generated very similar cost estimates and, as such, GSR (2017) used the cost set out in the memorandum of understanding (MOU) – using an average cost of £2,380 per appeal for a two-person panel.

PBE submitted a Freedom of Information (FOI) request to the DfE to request an updated cost. The FOI response states that in the most recent MOU, the cost of a two-person panel is now listed as £2,528. This is the cost incurred by HMCTS and invoiced to the DfE.

### Total tribunal costs

This implies total public costs of preparing for and attending tribunal hearings are:

$$£8,588(\text{local authority costs}) + £2,528 (\text{HMCTS costs}) = £11,116$$

The final step is to applying average tribunal costs to the total number of tribunals.

The total cost of preparation and attendance is applied to the 5,600 tribunals where a decision was made in 2021-22:

$$5,600 (\text{tribunals}) * £11,116 = £62,251,206$$

Of which, local authority spend is:

$$5,600 (\text{tribunals}) * £8,588 (\text{local authority costs per tribunal})$$

And HMCTS spend is:

$$5,600 (\text{tribunals}) * £2,528 (\text{HMCTS costs per tribunal})$$

The amount of money wasted on lost SEND tribunals is 96% of this total figure:

$$0.96 * £62,251,206 = £59,761,158$$

In addition, in 2021-22 a further 3,476 were concluded without a hearing (cases were withdrawn or conceded). In these cases, there is no data on

how much preparation the local authority undertook before the case concluded.

The complexity profile of these cases differs from that of those cases that end in hearings, meaning the average cost per case differs. As set out above, the average cost per case for the overall distribution of cases is £5,107.

Assuming the local authority spent 50% of the average time spent preparing for a tribunal that ended in a hearing, this implies additional local authority spending in 2021-22 of:

$0.5 * 3,476 \text{ (number of cases)} * £5,107 \text{ (average local authority spending preparing for a tribunal)} = £8,876,643$

If the local authority spent as much time preparing for a tribunal that ended in a hearing, this implies additional local authority spending in 2021-22 of:

$3,476 \text{ (number of cases)} * £5,107 \text{ (average local authority spending preparing for a tribunal)} = £17,753,286.$

### Mediation costs

Tribunal cost estimates reported here do not include the costs of mediation services. In the case that a parent/carer or young person does not agree with a local authority decision about their education, health and care plan (EHCP), they have the option to go to mediation, or proceed directly to tribunal. In 2021-22, 5,900 mediations took place.<sup>43</sup>

However, mediation does not always work, meaning that in some cases local authorities pay for mediation services (GSR (2017) authors use an average cost of £904 per mediation) which fail to reach agreement and end in tribunals. So while this is part of the overall local authority spending associated with EHCP disagreements, the purpose of this report is to estimate the total spending on SEND tribunals and we therefore do not include spending on mediation services in our estimates.

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<sup>43</sup> [Education, health and care plans, Reporting year 2023 – Explore education statistics – GOV.UK \(explore-education-statistics.service.gov.uk\)](https://explore-education-statistics.service.gov.uk)

## Annex B: Family resources survey analysis

PBE analysed data from the Family Resources Survey (FRS) 2021-22. The FRS is a continuous household survey which collects information on a representative sample of private households in the UK.

Analysis presented about families in this report is based on analysis of benefit units within the FRS. A benefit unit is a group of people who are typically financially interdependent (e.g., parents and their dependent children) and are considered together for some government benefit assessments (e.g., housing benefit). (Benefit units are different to 'households', a broader concept that includes people sharing living spaces but may not be financially interdependent, or considered a unit for benefit assessment purposes, e.g., a group of adults sharing a rented house).

In this analysis, PBE uses the core definition of disability, meaning that an individual has a health condition lasting at least 12 months, which also restricts their ability to carry out day-to-day activities (Equalities Act (2010)).

### Sample

There were 18,541 benefit units used in the analysis (this includes benefit units both with and without children).

**Table 5:** FRS sample – benefit units split by number of disabled adults and children

		Benefit unit count, by number of disabled adults			Total
		0	1	2	
Benefit unit count, by number of disabled children	0	11107	5870	941	17918
	1	258	218	48	524
	2	31	41	13	85
	3	3	6	4	13
	4	0	1	0	1
<b>Total</b>		<b>11399</b>	<b>6136</b>	<b>1006</b>	<b>18541</b>

Notes: unweighted figures

623 benefit units included at least one disabled child. Within the sample, 331 benefit units which had disabled children also had at least one disabled adult (53% of the sample). Applying weights to the sample, to ensure it more accurately reflects the wider UK population, 55% of benefits units with disabled children also include at least one disabled adult. This suggest that around half of disabled children have at least one disabled parent.

## Results

Detailed findings from PBE's analysis of the Family Resources Survey 2021-22 are presented below.

All the results are weighted.

Table 6: Work status within benefit units, split by family type

	Couple parents		Single parents	
	Non-disabled children	At least one disabled child	Non-disabled children	At least one disabled child
One or more full-time self-employed	15.8%	12.5%	3.4%	2.2%
Single/couple all in full-time work	33.5%	20.3%	30.8%	24.2%
Couple, one in full-time, one part time	25.0%	19.9%	0.0%	0.0%
Couple, one full-time, one not working	17.2%	27.4%	0.0%	0.0%
No full time, one or more part-time	5.2%	9.0%	32.6%	19.0%
Workless, head or spouse aged 60 or over	0.2%	0.7%	0.5%	2.1%
Workless, head or spouse unemployed	0.7%	1.2%	3.4%	1.7%
Workless, other inactive	2.4%	9.1%	29.3%	50.8%
<i>Some work in the benefit unit</i>	96.6%	89.1%	66.8%	45.4%
<i>No work in the benefit unit</i>	3.4%	10.9%	33.2%	54.6%

Table 7: Employment status of parents

	Couples				Single parents			
	Male, non-disabled children	Male, at least one disabled child	Female, non-disabled children	Female, at least one disabled child	Male, non-disabled children	Male, at least one disabled child	Female, non-disabled children	Female, at least one disabled child
Self-Employed	15.3%	14.2%	7.7%	6.5%	10.0%	10.9%	5.0%	2.4%
Full-Time Employee	74.5%	65.5%	57.6%	38.9%	61.4%	46.5%	50.6%	37.9%
FT Employee temporarily Sick	1.0%	1.9%	1.5%	1.9%	3.1%	0.0%	1.8%	2.0%
<b>Total: FT employee</b>	<b>75.5%</b>	<b>67.5%</b>	<b>59.1%</b>	<b>40.8%</b>	<b>64.5%</b>	<b>46.5%</b>	<b>52.3%</b>	<b>39.9%</b>
Part-Time Employee	0.4%	0.8%	3.8%	6.5%	4.9%	8.4%	5.2%	1.8%
PT Employee temporarily Sick	0.0%	0.0%	0.1%	0.3%	0.0%	0.0%	0.4%	0.0%
<b>Total: PT employee</b>	<b>0.4%</b>	<b>0.8%</b>	<b>3.9%</b>	<b>6.7%</b>	<b>4.9%</b>	<b>8.4%</b>	<b>5.7%</b>	<b>1.8%</b>
Industrial Action	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Unemployed	2.0%	1.3%	2.1%	3.2%	4.3%	0.0%	3.6%	4.6%
Work related Govt training	0.1%	0.3%	0.0%	0.0%	0.0%	0.0%	0.3%	0.0%
Retired	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Unoccupied under retirement age	4.3%	7.7%	23.8%	27.7%	8.7%	25.7%	18.1%	32.1%
Temporarily sick	0.0%	0.8%	0.3%	0.9%	0.0%	0.0%	1.3%	0.0%
Long-term sick	2.0%	6.8%	2.2%	12.9%	7.6%	8.5%	11.8%	19.2%
Students in non-advanced FE	0.2%	0.5%	0.7%	1.1%	0.0%	0.0%	1.6%	0.1%
Unpaid Family Workers	0.1%	0.1%	0.2%	0.0%	0.0%	0.0%	0.3%	0.0%

Table 8: Average, gross, weekly earned benefit unit income, for those in work

	Couples – non-disabled children		Couples – at least one disabled child		Single parent – non-disabled children		Single parent – at least one disabled child	
	Mean	Median	Mean	Median	Mean	Median	Mean	Median
Earned income	£1190	£1004	£919	£730	£424	£315	£398	£320

Notes: the analysis excludes all those parents reporting zero or negative income from work. Income is reported at the benefit unit level.

### Discussion: equivalised household income

The income results reported in [Figure 13](#) in the main report are direct estimates of median and mean earned income by family type. These results are reported because PBE is interested in how engagement in the labour market varies across families who are caring for disabled or non-disabled children.

However, it can also be interesting to consider *equivalised* household income. This takes into account the size and composition of the family. For example, a family caring for three children will have higher expenses than a family caring for one child. As such, their income will need to stretch further. This means that when comparing how well-off different families are, using equivalised income offers a more representative measure.

Assessing earned income differentials between families caring disabled / non-disabled children when household size and composition are taken into account, PBE finds that, broadly in line with the non-equivalised results, couple families with no disabled children earn more than those with disabled children. The difference in equivalised average (median) weekly earned income is £222, compared to £274 in the non-equivalised results. For single parents, taking household size and composition into account shows that those caring for non-disabled children have on average £43 higher equivalised weekly earnings than single parents caring for disabled children, compared to £5 less in the non-equivalised results.

It is important to note that due to data limitations, PBE applied an approximation of the OECD income equivalence scale. As per the OECD guidelines, PBE applied a weight of 0.67 for the primary adult, 0.33 for a second adult and then a weight of 0.2 for each child; there was no differentiation based on the age of the child. This provides an illustration of



the direction and difference between equivalised/non-equivalised income results.

Table 9: Average, gross, weekly earned benefit unit income, for those in work – direct estimates and estimates amended with equivalence weighting

	Couples – non-disabled children		Couples – at least one disabled child		Single parent – non-disabled children		Single parent – at least one disabled child	
	Mean	Median	Mean	Median	Mean	Median	Mean	Median
Earned income	£1190	£1004	£919	£730	£424	£315	£398	£320
'Equivalised' earned income	£936	£792	£712	£570	£484	£348	£405	£305

Notes: 'Equivalised' earned income here is approximated using the weights set out above, rather than the full OECD equivalence scale.

### Regression analysis results

The regression analysis below reports the impact of different factors on the employment status within a benefit unit (for those benefit units that include dependent children).

Those highlighted in green are variables that have a positive impact on employment status – for example, benefit units that have mortgages are more likely to be in employment, whereas those that rent are less likely. Those variables highlighted in purple are statistically significant.

This analysis highlights that having disabled children has a statistically significant negative impact on employment status within the benefit unit. However, this effect is smaller than for a range of other variables – for example, having a disabled adult in the household is a much stronger predictor of employment status, as is housing tenure and location of residence (region).

	B	S.E.	Wald	df	Sig.	Exp(B)
<i>Region</i>						
North West	0.029	0.133	0.048	1	0.826	1.030
Yorkshire and Humber	0.213	0.144	2.177	1	0.140	1.237
East Midlands	0.105	0.152	0.478	1	0.489	1.111
West Midlands	-0.133	0.145	0.849	1	0.357	0.875
East	0.540	0.145	13.889	1	0.000	1.716
South East	0.317	0.133	5.652	1	0.017	1.373
South Wales	0.435	0.152	8.212	1	0.004	1.545
Wales	0.278	0.180	2.389	1	0.122	1.321
Scotland	0.114	0.142	0.640	1	0.424	1.121
Northern Ireland	0.233	0.134	3.028	1	0.082	1.263
North East	0.069	0.169	0.169	1	0.681	1.072
<i>Sex</i>						
Sex	-0.978	0.067	210.821	1	0.000	0.376
<i>Disability status</i>						
Number of disabled adults in the benefit unit	-0.757	0.053	207.169	1	0.000	0.469
Number of disabled children in the benefit unit	-0.146	0.065	5.042	1	0.025	0.864
<i>Housing tenure</i>						
mortgage	1.052	0.093	127.255	1	0.000	2.864
Part-own-rent	0.232	0.375	0.381	1	0.537	1.261
rents	-0.390	0.089	19.046	1	0.000	0.677
Rent-free	-0.193	0.364	0.282	1	0.595	0.824
Constant	2.750	0.165	276.954	1	0.000	15.641

Notes: The sample population for the analysis is benefit units which include dependent children. B coefficients represent the change in logged odds of (being employed) relative to a 1 unit change in the independent variable.

Variable(s) entered on step 1: NW, Yhumber, EMids, WMids, East, SE, SW, Wales, Scotland, Nireland, NEast, Sex (coded 1= male, 2=female), No of disabled adults,BU(the Equality Act 2010-core def), No of disabled children,BU(the Equality Act 2010-core def), mortgage, partownrent, rents, rentfree.

Region reference area is London. This means that results are reported relative to likelihood of being employed in London.

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