

EQUALITY COMMISSION FOR NORTHERN IRELAND

Response to Department of Education Policy Proposal Consultation Document – Every School a Good School- The Way Forward for Special Educational Needs and Inclusion

January 2010

1. Introduction

1.1 The Equality Commission for Northern Ireland (“the Commission”) is an independent public body established under the Northern Ireland Act 1998. The Commission is responsible for implementing the legislation on fair employment, sex discrimination and equal pay, race relations, sexual orientation, disability and age.

The Commission’s remit also includes overseeing the statutory duties on public authorities to promote equality of opportunity and good relations under Section 75 of the Northern Ireland Act 1998 and the positive disability duties under the Disability Discrimination Act (1995).

1.2 The Commission’s general duties include:

- working towards the elimination of discrimination;
- promoting equality of opportunity and encouraging good practice;
- promoting positive / affirmative action;
- promoting good relations between people of different racial groups;
- overseeing the implementation and effectiveness of the statutory duties on relevant public authorities; and
- keeping the legislation under review.

Context - Education

- 2 The Commission welcomes the opportunity to respond to the Policy proposals outlined in the consultation document ***The Way forward for Special Educational Needs and Inclusion.*** We appreciate the efforts made by the Department to allow extra time for the Consultation Exercise on foot of comments it has received.
- 3 The Commission has been involved in this area of work for the past 10 years and played a significant role in the development of the Special Educational Needs and Disability Order (SENDO 2005), developing proposals for the legislation and building links with the SEN and disability sectors.
- 4 The Commission notes and endorses the Department of Education vision statement, in the introduction to the consultation document, and we look forward to engaging with the Department to ensure that *'Every learner fulfils his or her full potential at every stage of development.'*
- 5 The Commission and the Department expressed their shared commitment to ensuring that all children and young people should be allowed the opportunity to develop to their full potential at our annual conference in November 2008 when we launched ***Every Child an Equal Child***, the Commission's statement on key inequalities in education and our strategy for intervention.
- 6 ***Every Child an Equal Child*** outlines the Commission's three overarching objectives
 - every child has equality of access to a quality educational experience.
 - every child is given the opportunity to reach his or her full potential.
 - the ethos of every school promotes the inclusion and participation of all children¹.

¹ Every Child an Equal Child, ECNI 2008

The core of our education work has been to ensure that every child is given the opportunity to succeed to the best of their abilities and that every school should have an inclusive ethos and be a welcoming accessible environment for all children.

- 7 The Commission is acutely aware of the current economic climate and recognises that the efficient use of resources is a key driver for improving services. However, the Commission is of the view that reform of services and delivery must not result in the diminution of rights and equality of opportunity, especially in a field like education, where future life chances are so heavily dependant on high quality timely interventions.
- 8 Our comments on the proposals are made bearing in mind the context set out above and will fall into four broad areas. First, we comment on the general thrust of the document and secondly we comment on particular areas of concern in some detail from a policy perspective. We also make proposals for legislative change, in relation to improving the protections afforded by SENDO (2005), and, finally, we make recommendations in relation to the SENDIST, in appendices 1 and 2 respectively. It is timely to note at this stage however, that we have some concerns about the lack of detailed proposals and definitions within the consultation document.

General Comments

- 9 While the Commission recognises that this is a high level strategic document setting out a possible way forward for SEN and Inclusion, we are concerned that the content is too vague.
- 10 We understand that Department officials have announced, at public consultation events, that funding mechanisms have not been agreed or developed and that there is no agreed definition of complex and multiple needs. There appears to be a lack of clarity in the level of school based assessment and the necessary qualifications for carrying out this specialised area of work.
- 11 Parents of children with existing statements of SEN are very concerned that the proposals will result in the loss of the support that their child has been guaranteed through the Statutory Statementing process.
- 12 As a final general concern, the document gives the impression that the level of disability or Special Educational Need will be **the**² determining factor in whether a child attends a mainstream or special school. Two points arise from this. First, if this is the intention, it runs contrary to the principles of the existing SENDO which, as part of the Disability Discrimination Act (Part IV), is based on the presumption of making reasonable adjustments to facilitate the inclusion of a disabled pupil in a mainstream school. Secondly, the Commission is committed to the principle of inclusion, as is the Department of Education, and these proposals may involve the segregation of disabled pupils rather than their integration.
- 13 We recognise that in some cases the best educational experience for a child will be provided by special schools and where the parents and child make this choice it should be deemed appropriate. However, the Commission is concerned that the proposals as they stand have the potential to create a situation where disabled children and those with SEN are

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routinely educated in a special school setting regardless of the wishes of the parents or the rights of the child. This in no way detracts from the work that special schools do, however determining the school purely on the basis of disability, is not a position that this Commission will support.

- 14 Further to meetings and engagements with officials at the Department, the Commission recognises that much of the concern raised by the document is through a lack of detail and clarity. We feel that these issues must be addressed.
- 15 There is no 'easy read' version of the paper which may have assisted stakeholders to understand the intentions of the Department more easily.
- 16 The Commission will be brief on the specific points of concern below, however we look forward to further consultation and engagement on the action plans which, we assume, will be produced to develop the outworking of the policy proposals. In general terms, we consider that the proposals may not deliver the stated aim of Inclusion and of particular concern to the Commission, may compromise the equalisation of opportunities for children with SENs and disabilities in education.

Specific Issues

Funding Arrangements

- 17 The Commission notes that budgeting arrangements will not be addressed by the Department until after the consultation exercise. As noted above, there is a concern that the SEN and Disability budget may be put into the general 'additional needs' allocation without tracking to ensure that this is 'ring fenced' for the purpose. We note that the Minister has announced an additional £24 million for capacity building and training prior to the implementation of the proposals. However, we understand that training providers have not been agreed, nor the nature of training or accreditation that will be required for teachers to carry out assessments agreed.
- 18 There is a further risk that non recurring funding will train a group of teachers in the field who, when they are promoted or leave the profession, may not be replaced with similar specialists. The emphasis on devolving the overall SEN budget to schools is not necessarily the most cost effective use of this resource. It shifts the responsibility for outcomes to schools and away from a higher level strategic overview that could be built into an area based planning framework. This would ensure consistency within an area and a better use of funds with funding following the child and adapting to meet needs as the child changes school within that area.
- 19 As regards improving training and skills, in addition to raising awareness on the revised SEN Framework, SENCOs and other school staff should be made aware of their responsibilities under SENDO 2005 as regards disability discrimination and how the two pieces of legislation operate together. Cases like Michaela Hollywood's³, which was supported by the Commission, highlight the need for schools to be aware of the need to make reasonable adjustments to practices, policies and procedures under SENDO(2005) in relation to disabled pupils.

³ See appendix 1 paras 31-32

- 20 Both the Department of Education and the Boards (and successor bodies) are public authorities and therefore subject to the positive duties under the DDA and s75. The training of teachers (and student teachers) etc, on a revised SEN framework is an ideal opportunity to encourage positive attitudes towards disabled children-particularly when barriers experienced by disabled children may include negative assumptions about their potential educational abilities.

School Based Assessment of Needs

- 21 While teachers are competent to make general assessments about educational needs for children, the highly complex and specialised assessment of children with SEN or Disability requires specialist training. Teachers are not trained in diagnostics. The document and public consultation events referred to 'suitably experienced teachers'. This is a matter of particular concern to the Commission, given the lack of clarity in the appeals process. The Commission considers that without specific qualifications and training there is a high risk of missing early identification of needs and appropriate interventions, which could potentially lead to increased litigation not to mention the impact on a child's educational career and development.

Appeals process and review

- 22 There is a lack of clarity in the consultation document about when and how a parent can appeal a school based assessment decision. From our discussions with Department officials it would appear that an appeal would be to the Education and Skills Authority (ESA) and any appeal to the Special Educational Needs and Disability Tribunal (SENDIST), would name ESA as the responsible party. This is not clear from the document and we are concerned that there may be no clear right of appeal on the school based assessment, only the Multi Disciplinary stage. A school would have to agree to the Multi Disciplinary Panel (MDP) assessment and the child and parents would be in 'limbo'. Again, the lack of detail in the consultation document may be creating unnecessary concerns.
- 23 In relation to the yearly review of Statements, we note the document proposes abolishing the yearly review with a possible

review period at various key stages or at transition points. Children develop very rapidly and the elongation of review periods mean that increased (or decreased) needs for support may be missed.

Multi Disciplinary Assessment of needs

- 24 The development of MDPs is a welcome initiative, however, there is no evidence in the document or proposals to suggest that other key stakeholders have fully committed to this approach. Of concern to H&PSS providers may be the volume of requests for assessment and their capacity to provide suitably qualified staff. The Commission's experience in this area indicates that there can be long delays in accessing educational psychology assessments and long waiting lists for speech and language therapy⁴.
- 25 The Commission notes the Department's comment that the current Statementing system is overly bureaucratic, an area of common agreement between all parties. However, truncating the current needs assessment process alongside the creation of another tier of external assessment is unlikely to make it less so. We note that the H&PSS providers will be 'bound' by a duty to cooperate with ESA in developing and working the MDP, but we are unclear where this 'duty' arises from, nor how enforceable it would be. There is an inference that these MDPs will be supported in their work by the voluntary sector but once again there is no detail on how this is supposed to work, what it would deliver, or a consideration of the availability of resources in the sector to engage further on education work, without additional support and funding.

Diminution of Existing Protections under SENDO 2005?

- 26 The development of coordinated support plans (CSP) to address SENs and Disability issues appears to be a sensible development. However the consultation document indicates that these 'may' be given a statutory basis. The current Statement of Special Educational Needs provides a level of guarantee beyond

⁴ Feedback from educational professionals round table, Derry, June 2008

that proposed. If not put on a statutory footing the CSP has the potential to become aspirational and dependent upon resource allocation. In Annex A of the document a putative approach to a definition of which children with SENs who will be able to benefit from a CSP is given that comes very close to the legal definition of a disability in the DDA (1995). This has the potential to create a situation where the majority of children with statements of SENs will not be able to access the provisions of a CSP as their educational needs will not meet the proposed definition of disability.

Conclusion

- 28 The Commission recognises the pressure for reform of the current Statementing process both from an effectiveness and a cost basis. However we are unconvinced that the current proposals will deliver on an improved service for children which safeguards their rights. We welcome the renewed emphasis on early identification and intervention on SEN but we remain concerned over the apparent inconsistencies in relation to concepts of Inclusion which appear to be hampered by the intention that a child's disability should dictate the type of school a child attends.
- 29 The Commission would suggest that the Department revises the current SEN process as per appendix 2, and ensures that children's statutory rights are not removed. The Commission, members of the Education Committee and other MLAs believe this is a major concern in relation to the proposals as they stand. This was evidenced by a recent call from Mr Dominic Bradley MLA for a series of amendments to these proposals which are to be debated in the Assembly.
- 30 The Commission believes that there is insufficient detail in the consultation document in regard to the full out-workings of the proposals and the Commission reserves the right to make further comment at a later stage.
- 32 In the attached annexes, the Commission makes representations to the Department for urgent amendments to both SENDO (2005) and the procedural matters around SENDIST, and we would welcome the opportunity to further discuss these matters with officials.

Appendix 1

Proposals for urgent reform of SENDO 2005

- 1 The Commission recommends that the Department introduces urgent amendments to the Special Educational Needs and Disability (Northern Ireland) Order 2005 ('SENDO 2005') in order to secure greater protection for disabled pupils in schools against unlawful disability discrimination and harassment.
- 2 Although not specifically raised in the consultation document, the Commission is of the view that its recommended changes, which will provide increased protection for disabled children against discrimination and harassment and enhance their right to reasonable adjustments, is in keeping with the overall aims of the review; in particular, to ensure that every child is given an equal chance and that children with additional needs are given the necessary support to achieve their educational potential.
- 3 The Department will note that the Commission has already raised a number of proposals for urgent legislative reform with OFMdFM and the Junior Ministers, including the need for changes to both SENDO 2005 and the Disability Discrimination Act 1995 ('DDA 1995'). A copy of our proposal paper is available from the Commission's website⁵.
- 4 As explained in detail in the paper referred to (see pages 13-24), the Commission believes that the enactment of its proposed changes to SENDO 2005 and the DDA 1995 will further the strategic priorities of the Executive's Programme for Government; ensure parity with proposed equality legislation in Great Britain (GB) as set out in the Equality Bill; secure compliance with the draft European Equality Directive on the provision of goods and services; make the disability legislation easier to understand and implement; and, not least, help to address some of the key inequalities facing disabled people as

⁵ www.equalityni.org

highlighted by the Commission in its *Statement on Key Inequalities in Northern Ireland*⁶, issued in autumn 2007.

- 5 As regards developments in GB, it is clear that the Single Equality Bill, the majority of whose provisions are likely to come into force in autumn 2010, will, if enacted, substantially improve equality for disabled children in schools in GB through a range of measures.

In particular, proposed measures in the GB Single Equality Bill include;

- addressing the impact of the House of Lord's decision in *Mayor and Burgesses of the London Borough of Lewisham v Malcolm*⁷, which severely limited the scope of protection against disability- related discrimination. Measures include providing protection against indirect disability discrimination and discrimination arising from a disability. These measures, will for example, help address systemic discrimination and dismantle institutional barriers which impact on disabled children;
- providing increased protection for disabled children against direct discrimination (which can not be justified) and harassment;
- providing increased protection for disabled children against direct discrimination because of a *perceived* disability and for non-disabled children due to their *association* with a disabled child;
- removing the justification defence for a failure to make a reasonable adjustment by schools and others with responsibilities under SENDO 2005;
- increasing protection for disabled children against multiple discrimination; which will allow additional protection where

⁶ *Statement on Key Inequalities in Northern Ireland*, 2007, ECNI, www.equalityni.org

⁷ [2008] UKHL 43, House of Lords

- disabled children experience disadvantage due to a combination of equality grounds;
- increasing protection for disabled children against discrimination and harassment by schools and others after the relationship has ended (for example, if they are discriminated against after they have left the school);
 - increasing protection for disabled and non-disabled children against victimisation by schools and others (for example, if they are subjected to a detriment because they have brought a complaint of discrimination);
 - extending the questionnaire procedure to complaints relating to disability discrimination in schools; thereby enabling disabled children to obtain information from a potential respondent in relation to the alleged act of discrimination. The tribunal may draw an inference from a failure by the respondent to answer the questions or from evasive or equivocal answers;
 - providing for the reversal of the burden of proof, thereby making it easier for disabled children alleging disability discrimination under SENDO 2005 to successfully prove their claims.
- 6 The Commission recommends that the above changes are made to SENDO 2005 so that disabled children in NI have the **same level** of protection against discrimination and harassment when accessing education, as disabled children in GB **within a similar timeframe**.
- 7 It is important to note that some of the recommended changes in relation to SENDO 2005, will also provide enhanced protection against disability discrimination for disabled pupils in schools by general qualifications bodies (such as CCEA and Edexcel) when conferring general qualifications (for example, GCE A and AS levels).
- 8 In addition, the Department will note from this submission, that the Commission is also concerned that there is currently weaker protection for disabled pupils in schools under SENDO 2005

against disability discrimination and harassment, compared to the protection under SENDO 2005 in relation to disabled students in institutions of further and higher education.

- 9 For example, under SENDO 2005, unlike the provisions relating to institutions of further and higher, the following additional protection against discrimination and harassment, **does not apply** to disabled pupils in schools:-
- direct discrimination;
 - harassment;
 - removal of the justification defence for a failure to make a reasonable adjustment;
 - instructions and pressure to discriminate;
 - relationships which have come to an end;
 - discriminatory adverts; and
 - provisions relating to the reversal of the burden of proof.
- 10 The proposed changes will therefore ensure a harmonised approach across the SENDO 2005 provisions relating to schools and further and higher education; thereby ensuring consistency and clarity as regards rights and responsibilities.

Auxiliary aids and services

- 11 The Department will be aware that there is no duty placed on Boards and schools to provide auxiliary aids and services to disabled children under SENDO 2005.
- 12 As made clear in the consultation document, in order to obtain additional resources, the school must demonstrate that the child has some form of special educational need, and this usually necessitates the submission of an educational psychologist's report and the commencement of the statementing process. Only a small proportion of pupils have statements (3.9%) and therefore under the current system are *guaranteed* (subject to the outcome of reviews) additional support. Under the proposed arrangements, and in particular, the proposed removal of statementing, it is not clear that this *guaranteed* level of

additional support will be met, even for those children with complex educational needs.

- 13 In the Commission's view, in the event that statementing is abolished, there is an increased need for disabled children to have a *right* to obtain auxiliary aids and services under SENDO 2005; in circumstances where a failure to provide the auxiliary aid or service places them at a substantial disadvantage compared to non-disabled pupils and where it is reasonable for the school or Board to provide them.
- 14 It is important to note that not all disabled children are considered to have special educational needs. In such circumstances, the disabled child has no right to auxiliary aids or services under SENDO 2005, or to be considered for appropriate support under SEN.
- 15 In addition, the proposed extension of the reasonable adjustment duty to auxiliary aids and services will ensure that disabled children in schools are afforded the same rights as disabled students in further and higher education; where the reasonable adjustment duty on institutions of further and higher education does extend to auxiliary aids and services.
- 16 The Commission notes that research commissioned by the former Disability Rights Commission considered the impact of the Education (Additional Support for Learning) (Scotland) (ASL) Act 2004 and its interaction with the provisions of the DDA 1995⁸. The report highlighted, first, that local Government officers and other key informants believed that far fewer children would receive a CSP than had a Record of Needs; and, secondly, that the group of children with a CSP was likely to be different than those on the SEN register, and may include a greater proportion of children with social, emotional and behavioural difficulties and a lower proportion of children with physical, sensory and cognitive difficulties.

⁸ *Disability Discrimination Act, Education legislation Pre-16 and implications for a Single Equality Act; Report to the Disability Rights Commission*, S.Riddell, J.Ferrie, R.Maguire, commissioned by the DRC, www.creid.ed.ac.uk

- 17 It also indicated that 'most respondents felt that there were grounds for removing the exemption to the provision of auxiliary aids and services and alterations to physical features from Part 4 of the DDA (1995), since this would strengthen the rights of disabled children and underline local authorities' responsibilities'. It concluded that 'this was felt to be particularly important in relation to disabled children who did not have the protection of a statutory document stating the additional support they required in order to benefit from education.'
- 18 The Commission recommends that, in light of the exemption of auxiliary aids and services from the reasonable adjustment duty under SENDO 2005, the Department assesses the degree to which the proposed changes to SEN will ensure that all disabled children have access to the reasonable adjustments that they require. It further recommends that the Department assesses the gap in provision for disabled children who are not deemed to have special educational needs.

Physical access

- 19 The Department will be aware that, under SENDO 2005, the reasonable adjustment duty on schools and Boards does not extend to removing or altering a physical feature. Instead, SENDO 2005 places a duty on Boards and schools to plan for accessibility over time.
- 20 In particular, there is a duty on Boards to produce a written strategy on how, over a prescribed period, they intend to improve the physical environment of schools for the purpose of increasing the extent to which disabled pupils are able to take advantage of education and associated services provided by the schools. Boards also have a duty to take into account any guidance issued by the Department of Education about the content of their strategy, as well as the need to allocate adequate resources for implementing the strategy.
- 21 There is also a duty on schools to prepare and implement a written accessibility plan for a prescribed period which must include information on the physical accessibility of school

premises. In addition, schools are under a duty to have regard to the need to allocate adequate resources for implementing the plan.

- 22 SENDO 2005 allows for schools to be inspected in relation to the preparation, publication, review, revision, and implementation of an accessibility plan. Annual reports of grant-aided schools are required to include information on the schools accessibility plans.
- 23 The Commission recommends that there should be a duty on Boards and schools to overcome, where reasonable, barriers to physical access experienced by disabled pupils. It recommends this amendment to SENDO 2005 for the following reasons.
- 24 First, the Commission has concerns in relation to the current requirements on schools and boards in relation to the production and implementation of accessibility plans and strategies respectively. In particular, there are no clear timelines on schools and boards under SENDO 2005 in relation to the production and implementation of their duties. In addition, approval and monitoring arrangements for the access strategies and plans, as well as enforcement mechanisms where Boards and schools fail to implement these duties effectively, are weak.
- 25 Secondly, an extension of the reasonable adjustment duty to cover overcoming physical features will bring schools and boards into line with duties placed on all other service providers and institutions of further and higher education. This will ensure that disabled children in schools are afforded the same rights as disabled students in further and higher education.
- 26 It is important to note that many schools, in addition to being educational providers, also provide non-educational services and facilities to the public. In relation to those services, the duty to make reasonable adjustments in relation to the physical features of the school already applies.
- 27 In addition, as highlighted in our response to the Department's consultation on draft Regulations prohibiting discrimination by general qualifications bodies on the grounds of disability in 2007,

the need for schools to make reasonable adjustments to physical features is heightened by the fact that, although schools are not general qualifications bodies, many general qualifications bodies contract with schools (and other examination centres), to organise, supervise and undertake the delivery of examinations, testing and assessments. The Department will be aware that the vast majority of the general qualifications included in the prescribed list are assessed in schools.

- 28 As highlighted in the Code of Practice of the Equality and Human Rights Commission (EHRC),⁹ the duties on general qualifications bodies towards disabled candidates ‘cannot always be completely avoided or always discharged simply through delegation of such responsibilities to examination centres’. The Code recommends that both ‘centres and general qualifications bodies work effectively together to ensure that the requirements of disabled candidates are met and unlawful discrimination is avoided’. The Code also highlights that ‘a failure to do so may mean that both are liable for unlawful disability discrimination’ under the DDA 1995, and state that ‘it is possible that schools and colleges could themselves be individually or jointly liable (with the general qualifications bodies) for unlawful disability discrimination occurring in the context of delivering examinations, tests and assessments for relevant general qualifications.’
- 29 It should be noted that such a duty will only require adjustments to physical features where this is ‘reasonable’. In relation to what factors might be taken into account when considering what is reasonable, it is of note that the SENDO 2005 Code of Practice in relation to institutions of further and higher education, lists factors such as the need to maintain academic and other prescribed factors; the financial resources available; the costs of the adjustment; the practicability of the step; health and safety; and the relevant interests of other students.¹⁰

⁹ *Disability Discrimination Act 1995 Revised Code of Practice: Trade Organisations, Qualifications Bodies and General Qualifications Bodies*, EHRC, 2008, www.equalityhumanrights.org
¹⁰ *Disability Discrimination Code of Practice for Further and Higher Education*, 2006, ECNI, www.equalityni.org

- 30 Removing barriers to physical access will also benefit non-disabled children with temporary physical impairments (for example, a broken leg), who may otherwise be unable to access the full range of educational facilities and services.
- 31 It is important to stress the impact on the lives and education of disabled individuals with mobility impairments who face barriers when trying to access schools. This impact is illustrated by the case of Micheala Hollywood; a case brought under SENDO 2005 which was supported by the Commission, and highlighted in the Commission's publication *Real people, real change-Ten real stories*¹¹.
- 32 Micheala, who is a disabled wheelchair user, experienced difficulties due to her disability when she attempted to transfer to a new school in order to pursue an A level. As a result of these difficulties, Micheala was unable to pursue her A level at the school of her choice and the barriers she experienced resulted in a delay in her education
- 33 In summary, the Commission recommends that the Department assesses the effectiveness of the current duties on schools and Boards in relation to the preparation and implementation of accessibility plans and strategies and considers the impact of placing a duty on Boards and schools to overcome, where reasonable, barriers to physical access experienced by disabled pupils.
- 34 The Commission will shortly be seeking further information from the Department in relation to the degree to which schools and Boards have complied with their duties under SENDO 2005, as regards the production of accessibility plans and strategies.

¹¹ *Real people, real change-Ten real stories*, ECNI, 2009, www.equalityni.org

Appendix 2

Recommendation for Changes to SENDIST

- 1 The Department has sought views on whether the current informal appeals, dispute avoidance and resolution and formal appeal arrangements (SENDIST) for children with SEN should remain unchanged.
- 2 Although the Commission recognises that the focus of the review is in relation to the resolution and appeal mechanisms for children with SEN, the Commission wishes to use this opportunity to raise concerns in relation to the current operation of SENDIST as regards the resolution of disability discrimination complaints.

Listing of urgent cases

- 3 In particular, the Commission wishes to highlight the difficulties experienced by disabled applicants when seeking the urgent listing of their cases by SENDIST. In two disability discrimination cases supported by the Commission, the applicants ultimately withdrew their cases due to the failure of SENDIST to list their case, in circumstances where a hearing was urgently required.
- 4 In one case, the Commission had sought an urgent hearing in order to challenge the decision of an Education and Library Board not to provide a particular form of therapy needed by a disabled child over the summer months. As a result of the failure by SENDIST to urgently list the case for hearing as requested by the applicant, the Commission had to lodge judicial review proceedings against the Tribunal. Due to the delay in the listing of the case before SENDIST, the parents of the applicant had no alternative but to pay for the therapy requested and withdrew their proceedings. It should be noted that partial costs of the judicial review proceedings were awarded to the Commission by the High Court.

- 5 In another case supported by the Commission, a parent, due to her daughter's disability, had sought to obtain an alternative method of transfer to a grammar school via an educational psychologist's report in relation to her daughter with autism, instead of the requirement to sit the 11 plus exam. Her child was not stated at that time because of a delay in the process. The parent urgently required a decision from SENDIST in order to enable her to reach a decision as to whether or not her child could or should undertake the 11 plus transfer test. Again, due to a failure of the Tribunal to urgently list the case for hearing before her child was due to sit the transfer test, the applicant withdrew the proceedings.
- 6 The situation in relation to the above complaint was compounded by administrative issues in the Tribunal. In particular, the Tribunal identified and served proceedings on the wrong respondent, which resulted in further delays for the applicant.
- 7 The Commission is of the view that it is essential, due to the nature of disability discrimination complaints, that SENDIST lists cases for hearing in a timely manner when urgently required. This is critical due to the fact that on many occasions disabled pupils require urgent reasonable adjustments in order to meet their educational needs. In addition, as SENDIST does not have the power to make a retrospective order dealing with education provision, it is vital that applicants have the ability to seek timely redress when urgently required.

Publication of decisions

- 8 The Commission also recommends that the decisions of SENDIST are made publicly available; for example, by being published on the SENDIST website. The Commission recognises that in certain circumstances it may be necessary to anonymise the decision in order to protect the identity of the child. The publication of such decisions is essential in order to raise awareness amongst the general public and educational providers of the nature of disability discrimination cases under SENDO 2005.

- 9 In relation to other types of disability discrimination cases, the Commission has used decisions published by Industrial Tribunals and the County Court in order to highlight discriminatory practices by education providers, to help prevent further similar conduct by other service providers, and to raise awareness of disability rights under the equality legislation.

Arrangements at hearing

- 10 Finally, the Commission recommends that the Department reviews the physical arrangements made at SENDIST hearings. In particular, applicants supported by the Commission have found that arrangements at the SENDIST hearing (for example, room lay out) have contributed to increased stress when giving evidence in relation to their complaint.