



WELCOME BACK TO THE PARENT AND CARER ALLIANCE C.I.C.

Conference for Parents and Carers of Children and Young Adults with Special Educational, Health and Social Care Needs

The role of the LGSCO in SEN complaints

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Overview

- > Who we are and what we do
- > SEN: what we can and can't investigate
- > Remedies
- > What you can do as parents and carers

Who we are and **what we do**

- > Investigate complaints from the public about councils, adult social care providers and some other organisations
- > Independent, impartial and free
- > Unique power to extend investigations
- > Last step in the complaint process

SEN: what we can't investigate

- > Right of appeal – Special Educational Needs and Disability Tribunal (SENDIST)
- > Hillingdon Judgment - R (on the application of ER) v CLA (LGO) [2014] EWCA civ 1407
- > Cannot investigate actions of schools
- > Jurisdictional matters can be complicated

SEN: Education, Health and Care plans

- > Delays in completing an EHC needs assessment
- > Delays in issuing final EHC plan
- > Delay/failure to arrange the special educational need provisions outlined in the final EHC plan

Educational Psychologists: shortage

- > As part of the EHC assessment, councils must seek advice and information from an Educational Psychologist (**SEND 2014 Regulations, Regulation 6(1)**).
- > There is a national shortage of Educational Psychologists

SEN: Delay/Failure to secure SEN provisions

- > Council has duty to secure the special educational provision set out in Section F of the EHC plan.
- > This duty cannot be delegated.

Children out of school – what is the council's responsibility?

- > The Education Act 1996, Section 19
- > Councils must “make arrangements for the provision of suitable education at school or otherwise than at school for those children of compulsory school age who, by reason of illness, exclusion from school **or otherwise**, may not for any period receive suitable education unless such arrangements are made for them.”

Children out of school – what is the council's responsibility?

- > It is for the council to decide if it is satisfied a child is unfit to attend school
- > Council must clearly record its decision and rationale for why it considers it does not have a duty to make alternative provision.
- > Decisions must be made based on all available evidence
- > Councils must take action to require the child or young person's attendance at school.

The meaning of 'otherwise': councils must not restrict alternative provision

- > 'Otherwise' can mean a child is unable to take advantage of any available schooling, or they do not have a school place
- > When children are without places, councils may need to arrange alternative education

What is suitable full-time education?

- > Suitable education is “suitable to a child’s age, ability and aptitude including any special educational needs”
- > Provision must be full-time unless it would not be in the child’s best interests due to their physical or mental health. “Full-time” ranges from 21 hours in KS1 to 25 hours in KS4 – one-to-one tuition can count for more
- > Decision to provide less than full time must be clearly recorded and kept under regular review
- > Should be of a standard a child would receive in school

Focus Report: Out of school, out of sight?

- > This report focuses on a council's duty to arrange alternative provision
- > Highlights several case studies relating to children out of school or where struggling with little education
- > Report identified six recommendations
- > Available to download from our website

Remedies: **Our approach**

- > Remedy individual injustice and recommend wider service improvements
- > Require evidence of compliance with all recommendations
- > Action on non-compliance
- > Ombudsman's guidance on remedies

Parents and Carers: **what can you do?**

- > Familiarise yourself with the council's duties and responsibilities. Be aware of statutory timescales.
- > Tell the council about any problems or concerns
- > Try and resolve things with the council first. Give them a reasonable amount of time to act.
- > Make a complaint.

Questions?



SEN Law and SEND Tribunal

*Mrs Rukhsana Koser, Partner
Education Lawyers*



Definitions

Special Educational Needs

Child has a learning difficulty or disability which calls for special educational provision to be made

Significantly greater difficulty in learning than majority of the other children of the same age

Disability preventing or hindering making use of the facilities other children of the same age in a mainstream schools

Special Educational Provision

Education or training that is additional or different from that made generally for others of same age in mainstream setting

Progress is not limited to academic progress it has to include progress in communication, co-ordination, sensory, behavioural, social, emotional and mental health



Law and Guidance

- Part 3 of the Children and Families Act 2014
- The Special Educational Needs and Disability Regulations 2014
- The Special Educational Needs (Personal Budgets) Regulations 2014
- SEND Code of Practice dated January 2015
- Special educational needs and disability – A Guide for Parents and Carers, dated August 2014



SEN Support in Schools



SEN but no EHCP

Local Authority obligations are:

- Consider EHC Needs Assessment
- To make arrangements for the provision of suitable education at school or otherwise than at school for those children of compulsory school age

School must use its best endeavours to secure the SEP called for by the pupil's SEN is made



What is SEN Support in School

- All educational settings (nurseries, schools, colleges and further education) must make sure they meet the “reasonable” Special Educational Needs of children and young people they identify as needing extra support
- This is additional to or different from the support generally given to other children of the same age.
- The purpose of SEN Support is to help children achieve the outcomes or learning objectives set for them by the school. Schools should involve parents in this process.



Types of SEN Support in School

- Special learning programmes
- Extra help from a teacher or a learning support assistant
- Making or changing materials and equipment
- Working with child in a small group
- Observing the child in class or at break and keeping records
- Making sure the child has understood things by encouraging them to ask questions and to try something they find difficult
- Helping other children work with the child, or play with them at break time
- Helping the child with physical or personal care, such as eating, getting around school safely, toileting or dressing.
- Schools may also involve specialists to advise them on effective support and interventions e.g. Educational Psychologist, Teaching Advisory Service



A Graduated Approach

When a child is identified as having SEN, the education setting should take action to remove barriers to learning and put effective special educational provision in place.

The SEN support should be based on the graduated approach based on four steps. These are:

□ Assess

Teaching staff should work with the SENCO to assess child's needs, so they can give the right support.

They should involve parents in this process and, wherever possible.

Sometimes schools will seek advice from a specialist teacher or a health professional.

□ Plan

If the school decides that a child needs SEN support they must tell parents.

The school should talk with parents about the outcomes that will be set, what help will be provided and agree a date for progress to be reviewed.

This is often done through a SEND Support Plan.



A Graduated Approach

□ Do

Child's teacher is usually responsible for the work that is done with a child, and should work closely with any teaching assistants or specialist staff involved. The school should tell parents who is responsible for the support a child receives.

All those who work with your child should be made aware of:

- Their needs
- The agreed outcomes
- The support being provided
- The teaching strategies that are required.

□ Review

The school should review a child's progress, and the difference that the help a child has been given has made, on the date agreed in the plan.

Parents and child should be involved in the review and in planning the next step.



SEN and EHC NEEDS ASSESSMENT



Practical Tips

Keep a file all documents

Documents can include

- ❖ Medical reports/diagnosis
- ❖ School reports
- ❖ Individual Education Plan, Provision Map
- ❖ Minutes of meetings with school or other professionals
- ❖ Correspondence with school, Local Authority, other professionals

KEEP A PAPER TRAIL

After a call or face to face discussion send an email summarising your discussion

Keep a note book - write in it like a journal



Who can Request an EHC Needs Assessment

Parent can make a request to the LA

School can make a request to the LA

If Parent makes a request – sensible to let the school know



Request

Draft a letter setting out your request (LA may have a form on their website)

Find out who is Head of Special Needs Education at your Local Authority

Set out background information

Key conclusions and recommendations from medical reports, professional reports

List evidence in support

Set out Legal Test

Diarise when you send the letter to LA, obtain a delivery receipt and ask for an acknowledgement



Legal Test

Section 36 (8) of the Children and Families Act 2014 states:-

“The local authority must secure an EHC needs assessment for the child or young person if, after having regard to any views expressed and evidence submitted under subsection (7), the authority is of the opinion that—

*the child or young person **has** or **may have** special educational needs, and*

*it **may be necessary** for special educational provision to be made for the child or young person in accordance with an EHC plan.”*
(emphasis added)

A very low threshold



What LA does next

Acknowledge your request – chase if not received

Explain what happens next

LA may ask you for more information

LA will contact the school for information

A decision on the original request must be communicated to you within 6 weeks



Criteria for issuing an EHC Plan

- An EHC plan **must** be issued - where, in the light of the EHC Needs Assessment, it is **necessary** for special educational provision to be made for a CYP in accordance with a Plan
- If the CYPs needs cannot be reasonably met within the resources ordinarily, normally available in a mainstream setting, an EHC Plan should be issued
- LA should have considered whether child has made progress in all areas not just academic progress
- If your child is awarded exceptional funding (one off and for limited period) by the LA – it has accepted that child's needs can not be met within the resources available in a mainstream setting



Common reasons for refusing an assessment

- The CYP is not academically behind
- It is not possible to obtain an EHC Plan for dyslexia
- CYP primary need is health and not education
- CYP is not behind his peers e.g. 4 years
- CYP needs are not particularly severe
- CYP has not spent enough time on SEN Support
- School should apply for local exceptional needs funding
- School has not spent all the funding delegated in SEN support

ALL ABOVE REASONS ARE UNLAWFUL



LA refuses to assess

Week 6 – receive a letter refusing assessment must set out:

- Reasons for refusing for assessment
- Right of appeal
- Details of mediation advisers
- Way forward meeting – ask why your child not meet legal criteria

Don't be put off appealing the decision by the LA say it will reconsider the decision at a later stage.

Appeal – high success rate of appeals to SEND against refusal to assess



LA agrees to an EHC Needs Assessment

The assessment will help establish the CYPs needs and provision required

Advice must be obtained from parents, CYP, school, medical advice, Educational Psychologist and Social Care

Parents can ask for advice to be obtained from SLT, OT, CAMHS

When advice is provided, the written report should make sure that the support recommend is detailed, specific and quantified

Advice must be provided within 6 weeks



Timescales

LA decides not to issue an EHC Plan must do so by week 16 – explain why, right of appeal and mediation advice

LA decides to issue a draft EHC Plan must do so by weeks 14-15



Draft EHC Plan

The draft EHC Plan must be sent to the parents by the Local Authority (LA) between weeks 14-16 of EHC Needs Assessment process.

It should arrive with a letter from the LA and all the advice and information gathered as part of the EHC Needs Assessment process.

There's a lot to consider at this stage and timing is crucial, so be prepared and act quickly.

If everyone has been working together as they should have been, there should not be any great surprises in your child's draft EHC plan.

It is a legal document and the wording is very important, so you need to check it carefully.

Parent asks for changes to draft Plan must have evidence to support the changes requested

Independent Expert evidence – LA should consider all evidence but don't until you are in Tribunal process



Timescales

You have 15 days from the date the draft was sent to:

- Ask for changes to or make comments (officially called ‘making representations’) about the plan.
- Express your preference of school to be named in section I of the plan.
- Ask the local authority to arrange a meeting with you to discuss the draft plan.
- If time is very tight, for example if you are trying to get some help to check the plan, ask the local authority for an extension. Most will agree to this – the exact wording of the regulations is at least 15 days.

As a result of your representations the local authority may:

- Issue a final plan with all or some of the changes you want.
- Issue an unchanged final plan.
- Make changes of their own and reissue the plan in a draft form.

It is always good to negotiate with the local authority, but do not engage in endless ‘ping pong’. If it looks as if the local authority is not going to agree to your changes, it is generally preferable to get a final plan and then go for mediation and/or appeal as necessary.

Even if you “sign off” the draft plan, you will still have the right to appeal once the final version has been issued.



Evidence and Reports

The reports are the information and advice gathered from different people as part of the EHC needs assessment. They should be at the back of the plan and listed in Section K.

The first thing you need to do is to check the reports, as the content of the plan will be based on this evidence.

Check that all reports are listed, including your own views and any independent evidence you may have sent in. If anything is missing, inform the local authority immediately.

You may want to make additional copies of the reports that you can write on.

Go through the reports and highlight all difficulties identified and any help that has been recommended. It can be helpful to use different colours for needs and provision.

Also make a note of any differences of opinion, for example about what your child can or can't do, or about the amount of support required.



What should an EHC Plan contain?

No national standard format for EHCP – different LA's have different templates

The requirements for each section are set out in paragraph 9.69 of the CoP and strongly recommend that parents and young people check this carefully. The EHCP must contain:

Section A – the views, interests and aspirations of the child/young person and their parents

Section B – the child or young person's special educational needs

Section C – the child or young person's health needs which relate to their SEN

Section D – the child or young person's social care needs which relate to their SEN

Section E – the outcomes sought for the child or young person

Section F – special educational provision required by the child or the young person



What should an EHC Plan contain?

Section G – any health provision reasonably required by the learning difficulties or disabilities which result in the child or young person having SEN

Section H1 – any social care provision which must be made for a child or young person

Section H2 – any other social care provision which result in the child or young person having SEN

Section I – placement

Section J – personal budget (including arrangements for direct payments)

Section K – appendices – list and attach all documents upon which the EHC Plan is based



Most important Sections

The legally enforceable sections of EHC Plan are:

- **Section B** - It should be a 'pen portrait' of the child or young person's special educational needs, outlining their areas of difficulty in accessing learning.
- **Section F** - this section should include all the special educational provision required to meet the child or young person's special educational needs.
- **Section I** - this section should include the name and type of the school or post-16 institution which the child or young person will attend.



What does a Poor EHC Plan look like?

A poorly written plan may include more than one of the following:

No reference to diagnosis E.g. ASD despite the child having the diagnosis for many years

Lots of historical information no longer relevant reference to a school child not attended for many years

Blank sections in the EHC Plan

Special Educational Provision which should be in Section F as it educates and trains recorded in wrong and unenforceable Sections of the EHC Plan – D and H

Reference to funding at a certain level (this meaningless)

Therapy input being provide only by school staff and not appropriately qualified and experienced therapists.



Section B – Special educational needs

Describes the child's special educational needs i.e. What your child has difficulty with.

Start with summary /general description of your child.

Formal diagnosis e.g. ASD, Dyspraxia, Cerebral Palsy and test scores – then must specify the actual difficulty your child has because of the condition

It is a legal requirement that **all** the child's difficulties are listed in this section, so you can easily check that there is provision to meet each need.

Code of Practice defines four broad areas of SEN namely

- Cognition and learning

x has a specific learning difficulty namely dyslexia

y's working memory is at the 1st percentile for her age and she has difficulty processing information and following complex instructions.

- Communication and interaction

z's spoken language is at an early stage of development and she communicates through a mixture of gestures, signing and single words.

a has difficulties with social use of language and he cannot hold a reciprocal conversation.



Section B – Special educational needs

- Social, emotional and mental health

x has been diagnosed with ADHD and his behaviour can be very impulsive.

y has very high anxiety levels and finds the school environment extremely stressful and has periods of school refusal.

- Physical, Motor and Sensory

x has cerebral palsy which affects his right side and can experience difficulty trying to move round small places and cluttered environment.

x has difficulty manipulating objects such as pencils, buttons, zips etc.

x has handwriting difficulty and using tools such as compasses, rulers and cutlery.



Section F – Special Educational Provision

It is in relation to the issue of the detail and specificity of provision that most disagreements arise.

Some LAs have a tendency to set out support in very vague terms.

Section F should be as clear as possible as to what the child or young person will receive.

Wording describing any itemised provision must be specific and quantified e.g. speech and language therapy - how much, how frequently, delivered by whom, where, when in the school day?

Will the delivering professional understand what is intended.



Section F Provision

Challenge vague wording such as

- 'as appropriate' / 'as required'
- 'regular' / 'periodic'
- 'subject to review'
- 'would benefit from' / 'access to'

Ask for detail and specificity

- How long and how often receive therapy or programmes.
- Content of therapy or teaching programmes.
- Necessary qualifications and experience of staff clearly stated.



Examples of Provision

LSA

Emotional Learning Support Assistant

Speech and language therapy

Occupational therapy

ABA

Specialist tuition

Social group sessions

Acoustic systems

Community access/independence training

Transport training

Hydrotherapy

Counselling



Case Law – Provision

Class sizes: H v Leicestershire [2000] ELR 471.

Staff qualifications and experience: R v Wandsworth ex parte M [1998] ELR 424.

Specification as to small group work: L v Clarke and Somerset [1998] ELR 129.

Specification as to therapeutic input: R v Harrow ex parte M [1997] FCR 761.



Points to note

Less specificity may be required for a child in a specialist placement – but not in most cases & does not mean LA's can issue non-specific plans.

LA should consider all evidence including reports from parents – if depart from parent evidence must explain why

Any provision which “trains or educates” a CYP is recognised and specified in Section F of an EHC Plan as special educational provision

SLT, OT, Physio are often required to address a child's educational needs and should be included in Section F and not as health provision

LA cannot refuse to include a particular therapy in EHC Plan just because it is not available in the area

Must not contain anything allowing support to be changed without a right of appeal

Must not say support will be provide by parents or NHS

Funding details are unnecessary – just need details of provision

An LA cannot write a plan to fit the school it will nominate for the child

It is NOT the responsibility of the school to arrange the provision specified in an EHC plan



Remember poorly or badly written EHC Plan, which do not specify the child's special educational needs and do not quantify the proper amount of provision those needs require may result in child's difficulties being categorised as 'naughty behaviour'

Mainstream schools are not funded or resourced to provide a more enhanced package of support above what is written in an EHC Plan – the only remedy school is left with is exclusion.

Every child with SEN is entitled to a properly specified, detailed and quantified EHC Plan so that it is when a professional looks at the plan first time it is clear what the child's needs are and the provision they require to support them.

The special educational provision should be what the child requires and NOT what the Local Authority is willing to provide.

There is no 'this is what we can afford' clause in the legislation.



Section I – Placement

LA must consult parents as to their preference as to placement

LA must meet parental preference placement unless it is unsuitable for the child concerned, or the attendance of the child at the requested school would be incompatible with the efficient education of others, or the efficient use of resources

If CYP needs can be met cheaply in LA school then it can ignore parental preference

If named in Section I – school must admit child



Final Tips

When you read the plan do you clearly understand what is written in the document – if you do not understand it then it should be challenged

Is the information contained in the EHC Plan relevant – e.g. If child is 12 years old then information about nursery education is no longer relevant

Are all the diagnosis written into Section B – Special Educational Needs

Is the wording clear and specific in Section B – if your expert evidence concludes X has a diagnosis of Autism Spectrum Disorder – then make sure it is recorded in Section B

Are the therapies in the right sections – SaLT and OT should be in Section F if they are not then you can not force the Local Authority to provide the provision

Detailed, specific and quantified provision – what, by who, how often and for how long. Words such as access to opportunities for, enable the Local Authority to provide as little as they want/can afford.

After the Plan is reviewed check everything is still in the plan and therapies have not disappeared out of the plan

Give the Local Authority no more than 4-6 weeks to arrange the therapies when Plan is first issued or issued as an amended Plan after an Annual Review or after Tribunal proceedings – do not give them any longer and if NHS do not have capacity to deliver the therapies then the LA must commission a private therapist

If provision is quantified in Section F and it stops being delivered – a simple pre action protocol letter from a solicitor explaining the Local Authority is in breach of its legal duty, can lead to it being swiftly restarted.



Who has a duty to deliver what is in an EHC Plan

LA has a duty to ensure they identify all CYP who have, or may have, SEN for whom they are responsible

Only an LA can carry out an EHC Needs Assessment

LA has an absolute duty to arrange provision in section F and simply has to be delivered

The duty cannot be delegated to a school or college

A failure to provide the provision included in the EHC plan is remedied by way of judicial review in the High Court

Health provision in an EHC Plan must be delivered by the local commissioning group

Social care provision must be delivered by Social Services



SEND Tribunal



Which decisions can be appealed?

The authority decided not to carry out a needs assessment.

A authority declined to issue an EHC plan.

The content of the plan is inadequate.

The authority decided not to amend an EHC plan following an annual review.

The authority decided to cease to maintain the plan.



Right of Appeal – Deadline

Parents and young people have a two-month right of appeal to the Tribunal following a decision by their local authority.

In order to register an appeal, they will require a mediation certificate (this can be obtained any time during the two-month right of appeal), which should be issued either three working days following:

- ❖ mediation; or
- ❖ a decision by a parent/young person not to engage mediation.

Parents or young people can lodge an appeal either within 2 months of the original decision or within one month of the mediation certificate (whichever is later).



Evidence

Independent expert evidence is important and key to a successful appeal

The LA will obtain evidence from its own Educational Psychologist, therapists and teaching staff which no doubt will support the LA's case

Independent experts advice on the basis of what provision is required to meet the CYPs difficulties as opposed to what the LA or NHS resources allow

Witnesses attending on behalf of parents must have seen the child and produced a recent and current report at the time of going to a hearing

Other sources of evidence can include school records, LA records and records held by the NHS Trust



The Tribunal process

The Tribunal process generally spans 3 months.

If matters cannot be resolved between parties during this process, a hearing will be required.

At the hearing, the case will be determined by a tribunal judge, who is a trained legal professional (either a barrister or a solicitor), accompanied by one to two lay members (who are experienced in the field of SEN).

The SEND Tribunal makes decisions based on the written evidence in front of it. Therefore you must ensure that they have good, current evidence to support your case.

Independent experts determine the level and extent of the young person's SEN and the provision required.



Social Care and Health

As part of a special educational appeal, the SEND tribunal will be able to make non-binding recommendations on the health and social care aspects of Education, Health and Care (EHC) plans

There has to be an educational component to the appeal for it to be considered under the SEND Tribunal National Trial

During the appeal Health and Social Care can be compelled to respond to request for information, evidence and send a witness , if required

There is an expectation that the recommendations will be followed

If they are not going to be followed then social care and health will need to write to the parents/young person and Tribunal within 5 weeks of the decision, explaining why they have decided not to follow the recommendations



Appeal Timetable

Appeals are registered within 10 days of being lodged with the Tribunal

Upon registration a 3 month appeal timetable is set as follows:-

Week 6 – the LA must respond and file its Attendance Form

Week 9 – both parties file further evidence with the Tribunal

2 weeks before the hearing the appeal bundle is sent by the LA

Working Document is prepared and filed by the LA with the Tribunal 10 days before a hearing

Week 12 – the final appeal hearing takes place

Week 14 – the Tribunal sends out its decision to Parties



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THANK YOU



Any Questions for our afternoon speakers?



UPCOMING EVENTS

COFFEE MORNINGS

9th November 11:00 to 13:00 National Star, Ullenwood, Cheltenham

21st November 10:30 to 12:30 Highfield Garden World, Whitminster

CARE AT CHRISTMAS

15th November 18:00 to 20:00 and

16th November 10:00 to 12:00 Dursley Tabernacle Church

CARERS CHRISTMAS LUNCH

4th December 12:00 to 14:00 Toby Carvery, Over, Highnam

WEBINAR – HUMAN RIGHTS DAY FOCUS ON GLOUCESTERSHIRE CIN AND CP FIGURES FOR DISABLED CHILDREN

7th December 11:00 to 12:30 and 19:00 to 20:30