

SENlegal

NEWSLETTER

Parent's Newsletter Edition 10



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Please hold - your complaint is important to us.

Home to school transport - what does the law say?

Transitioning from children to adult services.

Upcoming events, exhibitions and workshops.

2020 Phase Transfer Deadlines



Reminder – Is your child in a Phase transfer year?

DON'T MISS THE DEADLINE!

Read more information on page 4...

"Please hold- your complaint is important to us"...



By Richard Nettleton, Trainee Solicitor

In life and in business, it does not matter what line of work you are in, if you interact with the public a complaint procedure can often be found. Often due to the Local Authority's actions or more likely inaction, a parent will need to access the Local Authority's complaint procedure.

Complaints to or about the Local Authority are broken into 3 distinct stages often referred to as Tiers:

Tier 1 - Complain to the Council – Information about how to complain to your particular Local Authority **must** be included on its website.

Tier 2 - Once a Tier 1 complaint has concluded (or you are unhappy with the conduct or time taken for the complaint to be resolved) you can complaint to the Council's Complaints Officer. It is important to remember that if your complaint is about a particular Officer of the Council, they should not be investigating the complaint at any stage as this would be inappropriate.

Tier 3 - If your complaint has not been resolved, you can ask the Local Government Ombudsman to look into your complaint. The Ombudsman will consider complaints based on the way a Council service has been given or how a decision has been made. However, it is important to note that the Ombudsman usually only considers your complaint once its been through the Local Authority's complaint procedure. The Ombudsman does have the power to make financial awards against a Local Authority and while this has happened recently (these awards have been in the region of £200-£1000), it should not be expected.

As a reader of this newsletter, your complaint against the Local Authority is most likely going to be in relation to:

- Breached timescales, either in relation to completing an EHC needs assessment, (not) issuing the draft or final EHC Plan;
- Failing to issue a decision following an Annual Review;
- Failing to provide provision stated in the EHC Plan; or
- Issues related to Transport



While your urge as a parent is to use the internal complaints procedure to resolve these issues, it is important to note that matters relating to a statutory breach (i.e. missed timescales) should be dealt with instead by a Pre-Action Protocol letter that a Solicitor can issue, threatening Judicial Review proceedings in the High Court as a quicker mechanism of getting you the intended result.

Once the breach or failure to provide provision has been resolved through pre-action proceedings, a complaint can then be lodged with the Local Authority regarding its handling of the matter.

Lastly, we know first-hand from the British Dyslexia Association Roadshows and other talks that we attend across the country, that parents often find themselves in the position of having an active Appeal to the SEND Tribunal and the Local Authority representatives refuse to return their calls or respond to e-mails.

If this situation occurs, you can make a request to the Tribunal using form SEND7 (*image right*) that an Order is issued regarding the answering of questions you have. Before submitting this to the Tribunal, you must submit this request to the Local Authority first and allow the Local Authority five working days to respond to your request and provide their views.

Once the five working days have elapsed or the LA provides you their view (often answering your questions), this can be submitted to the Tribunal, as this is most effective way of resolving a failure to communicate inside SEND Tribunal proceedings.

17 & 18 MARCH 2020 | **NEC BIRMINGHAM**

46 Naidex
ASPIRING FOR A BETTER FUTURE OF INDEPENDENT LIVING

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20 & 21 MARCH 2020 | **NEC BIRMINGHAM**

Dyslexia SHOW 2020

The UK's first free to attend exhibition dedicated entirely to the understanding & awareness of Dyslexia.

Book your ticket here!

REMINDER – Transfer Review

Transfer between phases of education.



If your Child/Young Person has an EHC Plan and is approaching Phase Transfer in 2020, we want to make you aware of an important deadline regarding this transfer.

The Statutory Deadline by when the Local Authority must have reviewed, amended and finalised EHC Plan is **15th February 2020** for children transferring from:

- (a) relevant early years education to school;
- (b) infant school to junior school;
- (c) primary school to middle school;
- (d) primary school to secondary school;
- (e) middle school to secondary school

Or, for young people transferring from Secondary School to a Post-16 placement, the deadline is **31st March 2020**.

This means that you must be in receipt of your child or young person's final EHC Plan by **15th February** or **31st March**, specifying what school/college they will be transferring to.

You should have already had your transition review, this is because after the review, your Local Authority have 4 weeks to make a decision, and then a further 8 weeks to finalise the EHC Plan from the date that they provide you with the Draft Amended EHC Plan. Therefore, in order to guarantee that these statutory deadlines are met, the review should have happened by **23rd November 2019** for children, and by the **4th January 2020** for young people moving on to Post-16 placements.

If you are not in receipt of your child's final EHC Plan by **15th February** or **31st March 2020** – do not delay. As this is a legal deadline, we can force the Local Authority to provide you with your EHC Plan from these dates. The Statutory Deadlines are there so that children and young people will have certainty about the placement they will be attending following Phase Transfer. If you do not agree that the school named by the Local Authority can meet your child's needs, then getting your EHC Plan in February/March allows you enough time to Appeal to the SEND Tribunal before the start of the school year in September 2020.

The Tribunal will get very busy as Appeals are registered. If you leave it too late to appeal should you need to, there is a risk that your Appeal will not be heard by the end of the school term (July 2020) and you will have to send your child to the Local Authority's placement in September 2020 or keep them at home – which is not an option for many people.

Don't get stuck at the back of a very long queue!



If your child's Transfer Review hasn't happened yet, you must force your Local Authority to complete the review **as a matter of urgency**.

By Hayley Mason - Senior Solicitor, SEN Legal.

Transitioning from children to adult services.

By Rebecca de Winter, Paralegal



The legal age of becoming an adult is 18 years in England and Wales, this can be a very unsettling period for parents and carers of young person with Special Educational Needs. The young person will transition from the care children's services to new world of adult services.

The Care Act was introduced in April 2015 to ensure that there is no gap in services when a young person makes the transition. The act stipulates that any children's services a young person is receiving before their 18th birthday will continue after their 18th birthday until adult care and support takes over.

When should parents start thinking about this transition?

This transition should be a gradual process. The process should ideally begin around the age of 14 years, in England tying in with the Year 9 school annual review. It is helpful that many young people will already have an Education, Health and Care Plan (EHCP) in place that sets out the provision they will require.

From the age of 14 years, parents and carers should also start discussing plans for transferring to adult healthcare with their healthcare professionals, such as GP.

How do I know what my Child's needs will be after they turn 18?

Before the young person turns 18 a request must be made for the Local Authority to undertake a "child's needs assessment" to determine if a child is likely to have needs when they turn 18 and what these needs will be. After the assessment, the Local Authority should draw up a care and support plan.

Both the Children and Families Act 2014 and the Care Act 2014 deal with support for young people with care and support needs preparing for adulthood.

Local Authority's Duty to Assess.

The Local Authority are under a duty to carry out the assessment if it considers it is a "significant benefit" to the child and if it is likely that they will have eligible needs for care and support when they reach the age of 18. Surprisingly, 'significant benefit' is not related to the level of a young person or carer's needs, but rather to the timing of the transition assessment. Meaning the Local Authority need to consider whether it is an appropriate time for the young person or carer to have an assessment to help with preparing for adulthood.

Statutory guidance lists the factors which may be considered by the Local Authority:

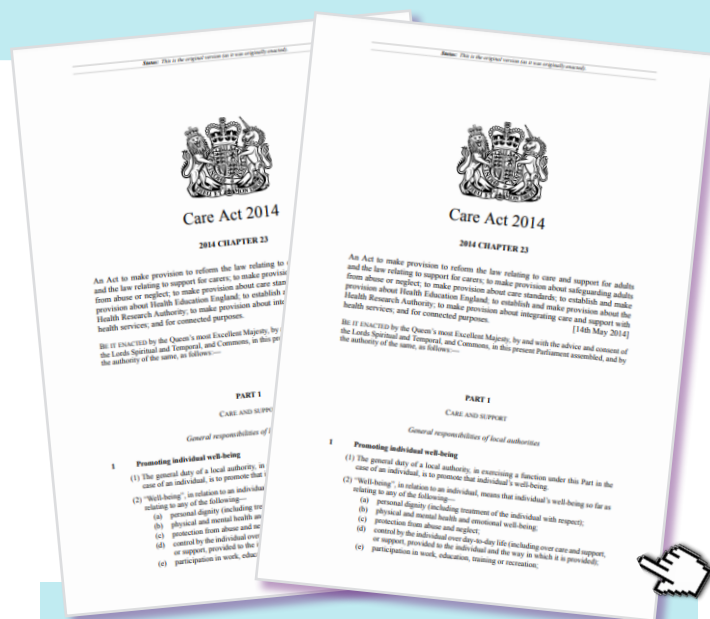
- Stage the young person has reached at school and any upcoming exams;
- Does the young person want to enter further/higher education or training;
- Does the young person want to get a job;
- Is the young person planning to move out of their parental home;
- The time it may take to carry out an assessment;
- The time it may take to plan and put in place the adult care and support;
- Any relevant family circumstances; and
- Any planned medical treatment.

Assessment of needs as a Carer.

The Local Authority must also carry out a "child's carer's assessment". The assessment will look at the carer's ability and willingness to continue caring for the young person after they turn 18, and any support the carer themselves might need. The Local Authority should draw up a care and support plan for the carer.

What if my request is refused?

If the Local Authority turns down the request on the basis it decides there is no 'significant benefit', it must provide reasons for this in writing 'in a timely manner'. They must also provide information and advice on what can be done to prevent or delay the development of needs for support. If refused, the parents, carer or young person can make another request.



Click on the images above to read the section of The Care Act 2014 which deal specifically with the transition of children to adult care and support.

For the whole document, visit:

www.legislation.gov.uk/kpga/2014/23/contents/enacted

Visit the **SENlegal** team at these events...

Events Calendar - January/April 2020

JAN 25 th	BDA Parent Pop Up Roadshow	<i>These free events are aimed at Parents, Carers or anyone who wants to learn more about Dyslexia.</i>	More Info
FEB 25 th	HACS Legal Advice Workshop	<i>Obtaining an Education Health & Care Plan (EHCP) Workshop for Parents, Carers & Professionals</i>	More Info
MAR 9 th	SNAP PCF Information Day	<i>Preparing for Adulthood information day with a morning legal workshop provided by SEN Legal</i>	More Info
MAR 17 th -18 th	The Naidex Show 2020	<i>Europe's most comprehensive trade, professional & consumer event dedicated to the independent living</i>	More Info
MAR 20 th -21 st	The Dyslexia Show 2020	<i>The UK's first free to attend exhibition dedicated entirely to understanding & awareness of Dyslexia</i>	More Info

Dyslexia
SHOW 2020

Birmingham NEC
20th - 21st March



SNAP PARENT CARER FORUM
CENTRAL BEDFORDSHIRE

Flitwick, Bedfordshire
9th March



HACS
Hillingdon, London
25th February

46 Naidex

Birmingham NEC
17th - 18th March

British Dyslexia
Association

Kingston Upon Thames
25th January





Home to School transport - what does the law say?

By Allys Kelsey, Paralegal

Travelling between home and school can be a difficult process, particularly when Local Authority policy often disregards the law.

To make matters all the more confusing, the entitlements is different depending on the child/young person's age. The process can be particularly confusing from the age of 16+ when many Local Authorities seek to remove transport provision altogether. As such, this article focuses on transport for young people aged 16+.

For the purposes of home – school transport the age groups are:

1. Children of compulsory school age (under 16)
2. Over compulsory school age but under 19 (16-19/sixth form age)
3. 19-25.

When focusing on group 2, **Section 509AA** of the **Education Act 1996** requires the Local Authority to produce a yearly Transport Policy Statement on or before the 31st May, outlining the arrangements and support provided in regards to young people of sixth form age. These are students who have started a course before their 19th Birthday. It also continues to apply over the age of 19, as long as they continue to attend the course they started before they turned 19.

Importantly, the Transport Policy Statement must specify the necessary arrangements to enable sixth form age students, receiving education or training, to continue to do so. When considering those necessary arrangements, the Local Authority must cover financial assistance for reasonable training expenses and travel concessions.

Under **Section 509AB**, the Local Authority are required to include arrangements for any disabled persons and persons with learning difficulties. This must include arrangements for those who may not receive education or training at establishments that are maintained by the Local Authority. The arrangements can be no less favourable than the arrangements specified for students of the same age attending schools. They must take into account:

- The needs of those who would not be able to attend a particular establishment if arrangements were not made.
- The need for a person to have reasonable opportunities to choose between different establishments.
- Under **Section 15ZA** ensure the arrangements are suited to the age, aptitude and ability of the young person, and for the location and times that the education or training is being provided.
- Distances and Journey times.
- Cost of transport and any alternative means of facilitating attendance.
- The nature of the route and alternatives.

continued next page...

So what does this mean?

As stated above, many parents approach us when their children become of sixth form age, as their Local Authority removes transport provision.

Whether or not this decision is lawful will depend entirely on the facts of each case, but it is important to note that the Local Authority do not have complete discretion to make the decision to remove transport.

The Law states that the Local Authority gets to decide whether transport is "necessary". However, when doing so, they must make the decision in consideration of the young person, their needs, and the reality of the situation. If they do not, and unreasonable remove transport provision, then they can be challenged by way of Judicial Review. If the Local Authority do decide that transport is necessary then transport must be provided free of charge.

If you are having difficulty with home-school transport from your Local Authority and find yourself going in circles, we can point you in the right direction.



Something worth shouting about...



98%
SUCCESS RATE
*figures from 2019

Thank you to all our clients and
hard-working staff for making this possible.