

SENlegal

NEWSLETTER

Issue 25 for Parents, Guardians and Carers of Children with SEND



Our Statement

The long-awaited White Paper has now been published by the Government and is open for consultation. SEN Legal is carefully reviewing its contents and will share our views, as well as submit a formal response, in due course.

In the meantime, we would like to reassure all parents that nothing has changed as a result of the publication of this White Paper. The current law relating to EHC Plans remains fully in force, and all existing legal duties continue to apply. There are no immediate changes, and rights and obligations remain exactly as they were.

In this Newsletter:

How was the White Paper really crafted?

The 'Section 19 duty' – Alternative provision for children who cannot attend school

Court of Appeal confirms: Local Authorities must maintain EHCPs during temporary moves



Department for Education

SEND REFORM 
SHARE YOUR VIEWS

How was the White Paper *really* crafted?

By Richard Nettleton, Associate Solicitor & Director

While the Secretary of State for Education was undertaking media interviews on Sunday, 22nd February 2026, ahead of the long-promised White Paper release, she repeated the statement:

“The assurance I can give to parents is that under the new system more children will receive support.”

However, the questions that should now be asked — and answered in full — are as follows:

1. Can you identify precisely which problems in the current SEND system your White Paper proposals will fix, and point to independent evidence demonstrating that the specific reforms chosen — rather than alternative options such as properly funding the existing legal framework — are the most effective way to address them?
2. Ministers frequently state that *“parents’ experiences are at the heart of SEND reform.”* How many parents, carers, disabled young people, and frontline professionals were directly involved in drafting the proposals themselves? How will their input be transparently published so that families can see where recommendations were accepted — and where they were rejected?
3. Given the White Paper’s repeated delays since autumn 2025, and the well-documented SEND crisis that predated the 2024 election, what specific evidence demonstrates that 18 months of preparation has produced robust, pupil-centred proposals rather than rushed cost-shifting measures?
4. What specific modelling has the Department for Education undertaken regarding transition arrangements, backlog pressures, and litigation risk arising from the White Paper? Will that analysis be published before any legislation is introduced?



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5. Local Authorities already describe SEND funding as a budgetary “crisis,” with councils overspending to meet their existing statutory duties. What independent assessment demonstrates that the Government’s proposed funding plan is sufficient to deliver the new model in full? How will it prevent the reforms from becoming a vehicle for cost-cutting that further destabilises council and school finances?
6. With councils already overspending on EHCPs and SEND Tribunal claims having risen by 187% in three years, why has no independent cost-benefit analysis of the rumoured shift toward mainstream placements been published prior to the White Paper to inform meaningful public engagement?
7. What specific measurable outcomes — for example, exclusion rates, attainment levels, SEND Tribunal appeals, and parental satisfaction — will trigger a review or reversal of the proposed reforms if they are not achieved within a defined timescale? Will the Government commit to including sunset or formal review clauses in any primary legislation?

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8. The 2025 Budget proposes the centralisation of SEND funding from 2028–29. How will this shift in financial responsibility affect the commissioning of independent placements, and what safeguards will prevent central budget pressures from driving a blanket policy away from independent schools, irrespective of SEND Tribunal or Upper Tribunal case law?

9. What steps will the Government take to ensure that Local Authorities are properly held accountable for failures to deliver the special educational provision specified in Education, Health and Care Plans?

It is doubtful that Whitehall has clear answers to these questions, beyond a policy approach increasingly focused on reducing expenditure. Nevertheless, now that the White Paper is available for public scrutiny — and the steady drip-feeding of policy proposals through the press has ceased — these are precisely the questions that should be put directly to the Secretary of State.



EHCP health checks

Our professional EHCP ‘health check’ service is the only fixed-fee service we offer at SEN Legal and provides you personal and expert advice on your child/young person’s draft or final, education, health & care plan (EHCP).

SILVER health check
£500 (+VAT)

- ✓ Your draft/ final EHCP and appendices will be read by one of our specialist solicitors.
- ✓ Our solicitors will make recommendations on amendments or additions based on the law and available evidence, and advise whether there is sufficient evidence to achieve changes to your EHCP.
- ✓ Our solicitors will discuss their recommendations with you via a **30 minute telephone call**.
- ✓ We will schedule your telephone call with us **within 7 days** of us receiving all necessary paperwork and confirming your instructions.

GOLD health check
£650 (+VAT)

- ✓ Your draft/ final EHCP and appendices will be read by one of our specialist solicitors.
- ✓ Our solicitors will make recommendations on amendments or additions based on the law and available evidence, and advise whether there is sufficient evidence to achieve changes to your EHCP.
- ✓ Our solicitors will advise you of their recommendations **via email, so you have a written record** of our recommendations.
- ✓ We will send your report to you **within 7 days** of us receiving all necessary paperwork and confirming your instructions.

PLATINUM health check
£950 (+VAT)

- ✓ Your draft/ final EHCP and appendices will be read by one of our specialist solicitors.
- ✓ Our solicitors will make recommendations on amendments or additions based on the law and available evidence, and advise whether there is sufficient evidence to achieve changes to your EHCP.
- ✓ Our solicitors will advise you of their recommendations **via email, so you have a written record** of our recommendations.
- ✓ We will send your report to you **within 7 days** of us receiving all necessary paperwork and confirming your instructions.
- ✓ In addition, you will have a **one hour meeting** with one of our specialist solicitors to discuss the EHCP, evidence, and the options available to you to challenge your local authority (if required). This meeting will be **within 7 days** of us sending our report to you and can be either in person at one of our offices (Bury St Edmunds or Cambridge) or virtual, via Microsoft Teams or Zoom.



The 'Section 19 duty' Alternative provision for children who cannot attend school.

By James Brown, Senior Solicitor

Since the COVID-19 pandemic and subsequent lockdowns, there has been a significant rise in children needing alternative provision. Many children are experiencing high levels of anxiety, or their placements have broken down. Other children, due to illness or permanent exclusion, may also be unable to attend school. In such situations, the Local Authority has a clear legal duty to ensure children continue to receive a suitable, full-time education. This duty applies even when a child cannot physically attend school. It is known as the “**Section 19 duty**”, found in Section 19 of the **Education Act 1996**.

When the Section 19 duty applies, the Local Authority must step in and arrange suitable educational provision. This may be delivered in such ways as:

- A specialist alternative provision setting
- A forest school
- Home tuition
- Online tuition

The exact arrangement will depend on the child's individual needs.

What is the Section 19 duty?

Under **Section 19** of the Education Act 1996, Local Authorities must arrange suitable, full-time education for children of compulsory school age who, “by reason of exclusion, illness or otherwise,” would not receive suitable education without support.

This is a broad duty. The word “otherwise” is important. It covers many situations that are not covered by ‘illness’ or ‘permanent exclusion’ such as:

- School refusal linked to anxiety
- Placement breakdown
- No schools being available for the child

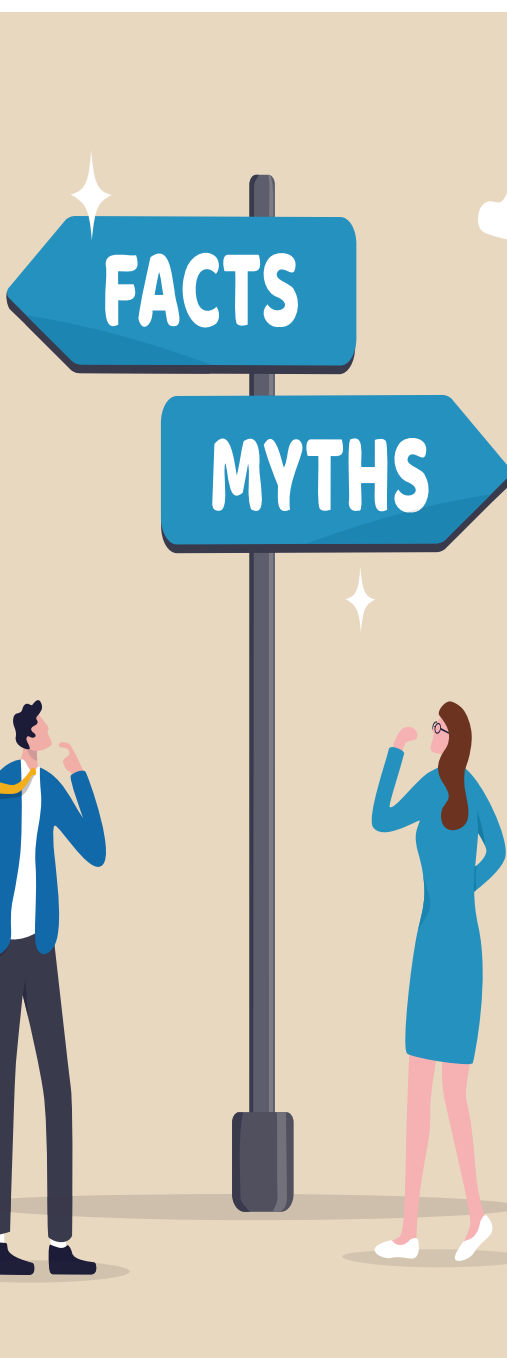
Although the Act refers to “full-time” education, there is no fixed legal definition. In practice, this is typically around **22–25 hours per week**. However, the Act confirms education can be arranged on a part-time basis if that is in the child's best interests.

Crucially, any provision must be **suitable to the child's special educational needs**.

If a child is permanently excluded, the Local Authority's duty begins from the **sixth day** after exclusion.

In cases of illness or other circumstances, alternative provision should be arranged **as soon as it becomes clear** that the child will be absent for a sustained period. Government guidance says this should be no later than **15 days**.

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What is happening in reality?

The Local Government Ombudsman has reported a sharp increase in parental complaints about failures to arrange alternative provision — from 38 complaints in 2021/22 to 400 in 2024/25, which is noted to be just a ‘small fraction’ of the disputes that are ongoing between parents and Local Authorities. In October 2025, due to a significant rise in complaints, it published a report providing useful guidance and commentary on the Section 19 duty.

What it shows - and what we have also seen in practice - is that many Local Authorities are:

- Failing to arrange provision at all
- Offering provision that is not suitable
- Offering provision that is not full-time

A common issue is Local Authorities insisting on medical evidence before accepting that the duty applies. They may request letters from a GP or CAMHS confirming that a child cannot attend school. However, there is no legal requirement for parents to provide such medical evidence.

While medical input can be helpful, GPs are often reluctant to formally “sign off” a child from school. CAMHS assessments can take months – often years – to be completed.

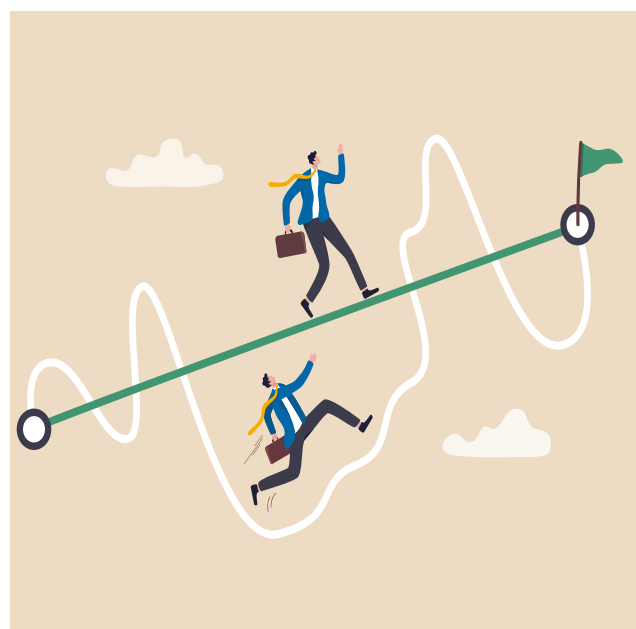
Case law makes clear that it is for the Local Authority to consider all available evidence and decide whether the Section 19 duty applies. It cannot refuse support simply because there is no specific medical letter. In one decision, the Local Government Ombudsman stated:

“The law does not say alternative provision will only be given where there is medical evidence. In deciding that the medical evidence was unsuitable, the Council overlooked its duty to provide suitable education if a child cannot attend school for reasons other than illness.”

What can parents do?

If your Local Authority refuses to arrange Section 19 provision, or the provision offered is unsuitable, this can be challenged. This is particularly important where delays in the EHCP process or the SEND Tribunal mean a child may be without any education for some time whilst longer term provision is to be determined.

Parents can submit a formal complaint to the Local Authority and escalate the complaint to the Local Government Ombudsman. However, complaints can take significant time to resolve. Another option is to send a **Pre-Action Protocol letter for Judicial Review**, which formally challenges the Local Authority’s failure to comply with its legal duty. In many cases, this can lead to a resolution within 14 days. We can assist in advising on the Section 19 duty and preparing any necessary letters to challenge this.





CASE LAW UPDATE

Hampshire County Council v GC [2026] EWCA Civ 20

Court of Appeal confirms: Local Authorities must maintain EHCPs during temporary moves

By Idhren Drew, Solicitor

In a significant and welcome judgment published on 23 January 2026, the Court of Appeal has confirmed that Local Authorities (LAs) cannot cease to maintain an Education, Health and Care Plan (EHCP) simply because a child is temporarily living outside their area.

The decision provides important guidance for professionals supporting families who share childcare / residence across different Local Authority areas, 'looked after' children placed outside their "home" Authority, military families posted elsewhere in the UK or overseas and other similar situations.

The Background

The case concerned the child of a Royal Navy officer who was deployed overseas for a fixed term. The family accompanied him abroad. During that time, the Ministry of Defence arranged appropriate special educational provision at a school overseas.

The family retained their home in the UK (renting it out during the deployment), returned for funded visits, and always intended to come back permanently at the end of the posting.

Initially, Hampshire County Council indicated that it would "freeze" the child's EHCP during the period abroad. However, without consultation or proper notice, it later decided to cease maintaining the EHCP altogether. The Council argued that because the child was no longer physically present in its area, it was no longer responsible for him and it was therefore unnecessary to maintain the plan.

The parents challenged that decision.

The Court's Decision

The Court of Appeal unanimously allowed the appeal and found in favour of the family.

Ordinary residence, not physical presence

A central issue was whether a child must be physically present in an LA's area in order for that Authority to retain responsibility.

The Court rejected that argument. Instead, it confirmed that the correct legal test is whether the child remains "ordinarily resident" in the area. This is a well-established legal concept that focuses on where a person normally lives and where their settled home is, taking into account their intentions.

In this case, there was a clear and continuous intention for the family to return to the UK at the end of the fixed-term deployment. The move was therefore temporary. As a result, the child remained ordinarily resident in the original LA's area, and the duty to maintain the EHCP continued.

The Court made clear that an LA's responsibilities extend not only to children physically present in their area, but also to those temporarily absent — even for months or years — provided they remain ordinarily resident there.

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The duty to “secure” provision

The Council also argued that it could not maintain the EHCP because it was under a statutory duty to “secure” the special educational provision specified in Section F of the plan. It said it could not fulfil that duty while the child was overseas.

The Court firmly rejected this reasoning. The statutory framework already provides mechanisms to deal with temporary absences. In particular:

- Where parents have arranged suitable alternative provision (as was the case here), the LA is not required to duplicate that provision; and
- The LA may reassess the child’s needs for the temporary period and amend the EHCP accordingly.

Practical difficulties in arranging provision outside the area are not, in themselves, a lawful basis for ceasing to maintain an EHCP.

Procedural safeguards

The Court was also critical of the serious procedural failures in this case. There had been no proper consultation with the parents before the decision to cease maintaining the EHCP was made.

The judges described these failures as “egregious and manifest breaches” of the statutory safeguards. Where proper procedures are not followed, a cease-to-maintain decision will be unlawful and liable to be set aside.

Why this matters

This judgment significantly strengthens the position of children and young people with EHCPs. It makes clear that temporary moves — even lengthy ones — do not automatically bring LA responsibilities to an end.

Local Authorities must now approach any decision to cease maintaining an EHCP with considerable care, particularly where there is clear evidence that the move is temporary and the family intends to return.

For families facing similar situations, this decision provides important clarity and reassurance that their child’s legal protections do not simply fall away during a temporary relocation.