

SENlegal

NEWSLETTER



Issue 23 for Parents, Guardians and Carers of Children with SEND

HAPPY SUMMER HOLIDAYS!



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SEND Reforms - the changing legal landscape

By Deborah Camp, Solicitor

The upcoming SEND reforms are a topic many of you have no doubt been following closely. In last month's Spending Review, the government announced that £760 million would be allocated to reform the SEND system — with further details to be outlined in a white paper, expected this autumn. Major changes are anticipated, though much speculation remains about what those changes might involve.

While most agree that the current SEND system is not functioning effectively and that reform is needed, there are serious concerns among parents, professionals, and campaigners about whether the government's proposals might worsen the situation for children and young people with SEND — potentially eroding or even removing some of the key rights currently protected under law.

Financial Context

At present, high needs spending deficits from SEND budgets are not included on local authority (LA) general balance sheets. This is due to a statutory override, originally set to end in March 2026 but now extended until the end of the 2027–2028 financial year. The purpose of this override is to prevent LAs from being declared bankrupt due to escalating SEND deficits — where the cost of providing necessary support exceeds the budget available. However, extending this override is not a long-term solution, nor does it provide any additional funding to LAs.

What we know so far:

Although specific details have not yet been released, the government has indicated the reforms will focus on:

- Early identification and intervention across the system
- Creating more specialist places within mainstream schools & funding LAs to support this
- Increasing inclusion within mainstream schools

So far, the government has refused to confirm or deny whether the reforms could lead to the loss of existing provision for some children or young people. On 1 July, Catherine McKinnell, Minister for School Standards, told the Education Committee that the government would not remove *“effective current provision that is working for children and young people.”*

However, reading between the lines, this is not a clear guarantee that existing provision will be protected in all cases.

There are also growing concerns that the government may seek to limit access to Education, Health & Care Plans (EHCPs), or even phase them out altogether — understandably a major source of anxiety for families and professionals alike.

The Education Secretary recently stated in an interview that no final decisions on EHCPs have been made — offering little reassurance at this stage.

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Should Families Act Now?

We've been asked by many parents recently whether there is any point in enforcing their rights under the current legal framework, given the possibility of sweeping reforms later this year.

The short answer is: **yes**.

The law as it currently stands is still in force, and families should not delay in asserting their legal rights. The white paper expected this autumn will outline proposals — but nothing will change overnight.

Any reforms that are introduced will involve a transition period, and they may also be subject to judicial review. There is already strong opposition from parent groups and campaigners, and we anticipate this debate will continue for some time.

In the meantime, if your child or young person is not receiving the provision specified in their EHCP — which they are legally entitled to — your LA may be in breach of its duty to secure that provision under **Section 42 of the Children and Families Act 2014**. Issuing a Pre-Action Protocol letter is often an effective way to enforce this duty and resolve the issue.



Alternatively, if you have requested an EHC needs assessment and your LA has failed to comply with the statutory timeline, you are entitled to challenge this. **Under Regulation 5(1) of the SEND Regulations 2014** the LA must notify you within six weeks of receiving a request whether it intends to carry out the assessment. A failure to do so constitutes a breach of statutory duty.

If you're considering lodging an appeal and are still within the deadline, we recommend starting the SEND Tribunal process as soon as possible. If your LA has not met its statutory obligations following an annual review or during the EHC needs assessment process, this could be delaying your right to appeal and challenge any decisions made.

If any of the above applies to you, **contact us** to arrange a free 15-minute courtesy call with a solicitor to receive initial advice and discuss how we can support you.

We will continue to monitor the political situation closely and will provide further updates as more details about the SEND reforms are announced. So, watch this space!

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Need advice or more information?

Call our friendly team on **01284 723952** to speak with one of our specialist Solicitors, or contact us online by **clicking here**.

The answer is 42... but what is the question?

By Richard Nettleton, Solicitor & Director

Last month, the Department for Education (DfE) published facts and figures from the January 2025 census day. What these figures show is that 638,745 children and young people in England now have an Education, Health and Care Plan (EHCP) — a 10.8% increase compared to January 2024.

This can be broken down further into the following statistics:

- 97,747 new EHCPs were initiated in 2024 — 15.8% more than in 2023.
- 105,340 EHC needs assessments were carried out — an increase of 15.7% from 2023.

The total number of EHCPs in existence has more than doubled since 2016, when 269,000 EHCPs were in place — a 137% increase overall.

While political rhetoric, input from unqualified think tanks, and fear over the future of EHCPs reach new heights, it's important to remember that nearly 1.7 million students — around 19.5% — receive some form of SEN support.

Any suggestion that removing EHCPs will somehow make children's needs disappear — or eliminate the requirement to meet those needs — is a fantasy. And while we may live on an island, this is not some mythical land of unicorns and rainbows.

So, why are EHCP numbers rising?

The real question is: why have EHCP numbers been increasing steadily for the past decade? In my experience, several key factors contribute to this growth:

1 - Greater awareness and improved identification of needs, including increased diagnoses of autism, ADHD, dyslexia, mental health issues, and speech and language disorders. This improved recognition by parents, schools, and professionals rightly leads to more applications.

Education, Health & Care Plans Headline facts & figures 2025:

638,745

Number of EHC plans as
at January 2025

97,747

Number of EHC plans
started during 2024

154,489

Number of requests for an
EHC needs assessment

105,340


Number of EHC needs
assessments completed

46.4%

Percentage of new plans
issued within 20 weeks

44,862

Number of EHC plans
ceasing during 2024

[Read the Department for Education 2025 accredited official statistics here.](#) 

2 - An EHCP provides a legal guarantee to provision — and when properly specified and quantified (*read our “power of specificity” article from our February 2021 newsletter*), the Local Authority is legally required to deliver that support (*read our ‘Section 42’ article in our April 2025 newsletter*). While some Local Authority supporters blame “pushy parents” or suggest that schools and parent groups are encouraging EHCPs over SEN Support, the high success rate in SEND Tribunals is simply the legal system applying the law as it was intended — not “gaming the system.”

3 - Mainstream schools lack sufficient early intervention and inclusive support. Even the most proactive schools often find that the EHC needs assessment process is slow and frequently exceeds the 20-week statutory timeframe. In fact, only 46.4% of new EHCPs were issued within this deadline — and the quality and legal compliance of those plans is declining year on year. *continued on next page...*

4 - Lastly, economic pressures and budget constraints cannot be ignored. Local Authority deficits in SEND budgets are projected to reach £8 billion by 2027, and EHCPs are often blamed. But in reality, these deficits are a symptom of chronic underfunding and poor strategic planning — which forces more families to seek EHCPs simply to access the provision that should be available as standard.

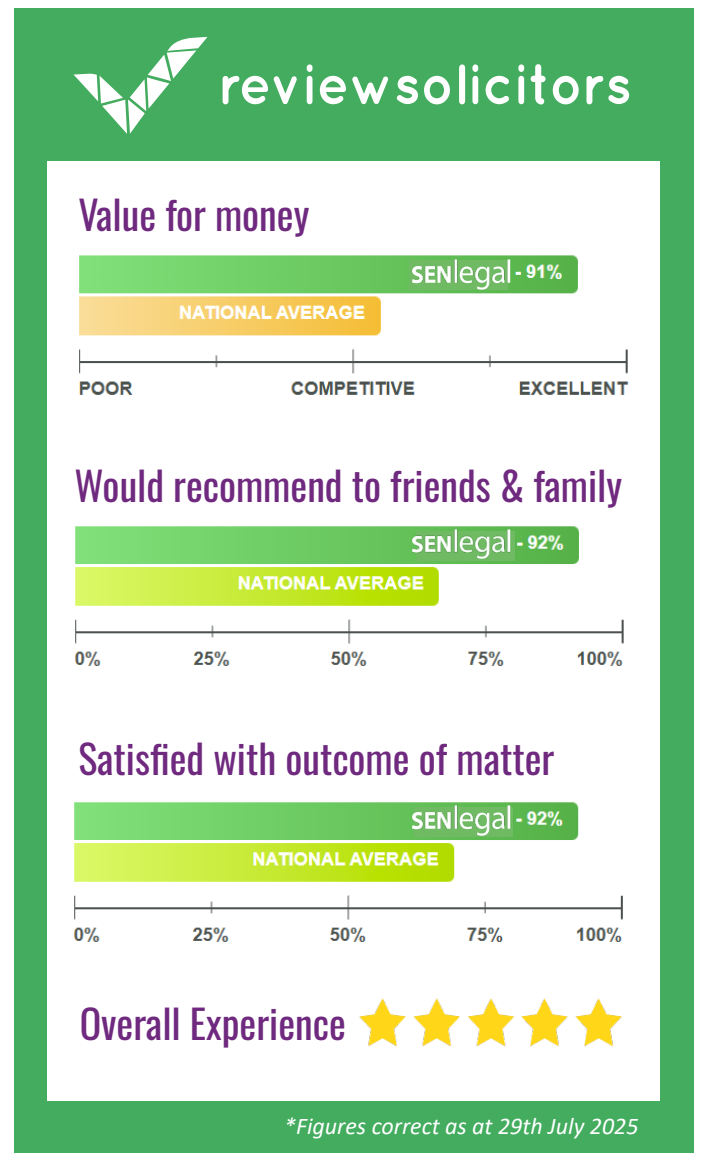
Conclusion

Yes, the figures show that EHCP numbers continue to rise — but the solution is not to dismantle or weaken the legal protections EHCPs afford.

In my view, this increase reflects a lack of accountability, chronic underinvestment, and a failure by central and local government to take a long-term view. Instead of focusing on capital investment — such as improving buildings, staff training, infrastructure, and services — decision-makers are chasing short-term cost savings.

This is how we’ve arrived at the current situation, and why many children and young people cannot access adequate support without an EHCP.

This won’t change overnight — and the current messaging about phasing out EHCPs is, frankly, shambolic at best.



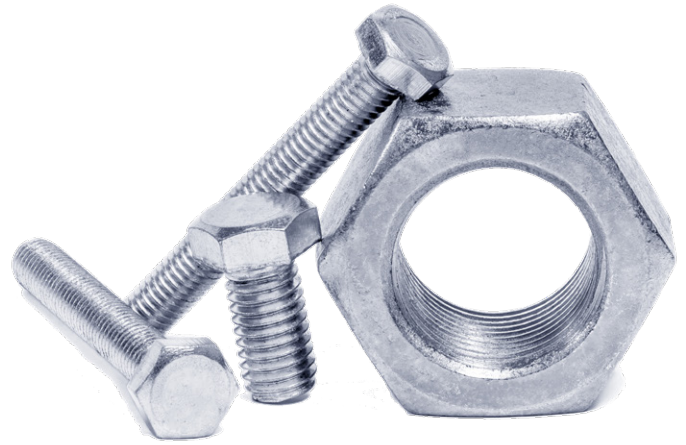
Free legal resources for parents, carers and professionals working in the SEND Sector.

Watch all of our recorded webinars at...

www.youtube.com/senlegal

'One size fits all' is not acceptable for Post-16 Transport

By James Brown, Solicitor



In our previous newsletter, we provided clarity on the legal position regarding transport to and from educational providers for children and young people across various age groups. As outlined in that article — which we strongly recommend reading before this one — the most complex age group is 16–18-year-olds (Sixth Form age).

The law requires local authorities (LAs) to publish a transport policy and to consider what support is reasonably required for those who qualify for transport assistance. Historically, there have been limited successful challenges against adverse decisions in this age group. However, this year alone has seen one successful case in the High Court and a damning Local Government Ombudsman (LGO) report into a specific local authority's post-16 transport policy and decision-making.

These developments provide valuable guidance and reinforce the need for LAs to consider the individual circumstances of each application rather than applying blanket policies.

Case: TYC, R (On the Application Of) v Birmingham City Council [2025] EWHC 623 (Admin) (13 March 2025)

This case involved a single parent and a dispute over transport to and from school for her 17-year-old child. In the previous academic year, the young person had been transported via a taxi with an escort. For the following year, the LA withdrew this service - instead awarding a travel pass worth £315.

Due to the complexity of the young person's needs and their inability to travel independently, the mother had to significantly reduce her working hours to escort them to school. She was ultimately facing the possibility of giving up work altogether.

The Court quashed the LA's decision, finding it irrational, and ordered a reassessment of the transport application. The ruling highlighted the LA's failure to consider the mother's personal circumstances, including the impact on her employment.

The Court emphasised that:

"They should not have a blanket policy of never providing discretionary travel and must properly consider and engage with the reasons given by a parent as to why they consider that their child's particular circumstances are exceptional and justify an award of travel support to school."

The Court concluded that the travel budget offered was entirely unreasonable in the circumstances.



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Local Government Ombudsman Report

The LGO report examined three separate complaints related to post-16 transport applications, all against Derbyshire County Council ([click here to read more](#)). While each complaint involved different circumstances, they shared similarities with the TYC case.

The Ombudsman found:

“Councils must demonstrate they have considered the options offered to individual families, who are entitled to transport support, that actually provide a practical, safe and affordable solution to allow them to attend. They should not be given a simple ‘one size fits all’ blanket offer.”

In each case, while the LA acknowledged the need for transport assistance, the solutions provided were inadequate and failed to ensure the young people could actually attend school or college. Specific issues included:

- 1** - A mother had to leave her job to escort her child, as alternative transport was not feasible and a private taxi was unaffordable.
- 2** - Another family had to arrange a private taxi due to the mother’s inability to drive. The shortfall between the travel budget and actual taxi costs exceeded £11,000 per year.
- 3** - A young person was routinely dropped off late and picked up early, missing essential education and special educational provision.

In all three cases, the transport arrangements were reassessed and a taxi service was ultimately provided to ensure the young people could attend school or college.

Conclusion

These examples clearly demonstrate that LAs must not rely on rigid, blanket policies — such as simply offering travel budgets or narrowly defining “exceptional circumstances.” Doing so is not only inadequate but potentially unlawful and open to challenge.

Such decisions can and should be challenged — initially through the LA’s transport appeal processes, and, if necessary, through complaints to the Local Government Ombudsman, the Secretary of State for Education, or Judicial Review.

Parents, professionals, and schools — who are often called upon to assist — must be aware of these legal protections and the mechanisms available to challenge unreasonable decisions.

VAT's the problem?

VAT and Independent Schools: What does it mean for SEN families?

By Liam Molloy, Paralegal



Recently, the High Court has dismissed a legal challenge against the introduction of Value Added Tax (VAT) on private school fees. This change, which was announced by the government earlier in the year now with effect, has understandably caused some concern and uncertainty among many families; particularly those who deeply rely on independent specialist provisions for children with Special Educational Needs and Disabilities (SEND). Within this article, we explain what the court has decided, what this means in practice, and what options remain available to those that matter most- families.

What was the legal challenge?

This past June, three separate groups including private schools, faith organisations, and parents; all brought judicial review claims arguing that the imposition of 20% vat on school fees was simply unlawful. They claimed it breached their rights under the European Convention on Human Rights (ECHR) including:

- Article 2 of Protocol 1 - The right to education
- Article 9 – Freedom of Religion (faith-based schooling) and;
- Article 14 – Protection from discrimination (disability grounds)

The High Court accepted that these rights were engaged. For example, some SEN pupils could no longer access suitable education if their parents could not afford increased costs. However, the Court ultimately dismissed all claims.

What did the court decide?

The judges held that while the policy may negatively affect some families, Parliament has a “wide margin of discretion” when setting tax policy. The rationale from the government was found to be lawful, based on the intended redistribution of funds- specifically, using the revenue raised to invest in the state education sector, which includes hiring more teachers and improving SEND provisions across England.

Crucially, the Court found:

- The right to education does not include a right to private education, even for SEN pupils.
- The VAT policy, although burdensome for some, was not discriminatory in law, and any differential impact was justified in the pursuit of a legitimate aim (improving education for all).
- The government is not required to exempt SEN families or religious schools from the new tax.

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Why is this relevant for SEN families?

As we all know, many children with complex needs are often than not forced to attend either independent schools (due to class sizes, sensory environment) or independent specialist schools because there simply is no adequate state alternative. For families without an Education, Health, and Care Plan (EHCP), or for those paying privately for provision not secured in Section I of the EHCP, this sudden fee increase we have seen in cases has made attendance unaffordable.

What Can Families Do?

- ✓ Challenge Local Authority refusals to name appropriate placements, especially where no suitable state provisions exist. This will in the majority be achieved by appealing to the SEND Tribunal with placements named in Section I of an EHC Plan.
- ✓ Request an urgent annual review if circumstances have changed.
- ✓ Seek legal advice if your child's placement is at risk due funding concerns or local authority inaction.

As always, we at SEN Legal will continue to assist families navigating the complex intersection between ensuring your child's needs are met and economic policy. While this High Court decisions have closed one legal avenue, it has highlighted the urgent need to protect the rights of children with SEND in an evolving educational landscape.

For further guidance or to speak with one of our friendly solicitors, please get in touch.

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.