

SENlegal

NEWSLETTER



Issue 25 for Schools and Professionals working in the SEND Sector.

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.

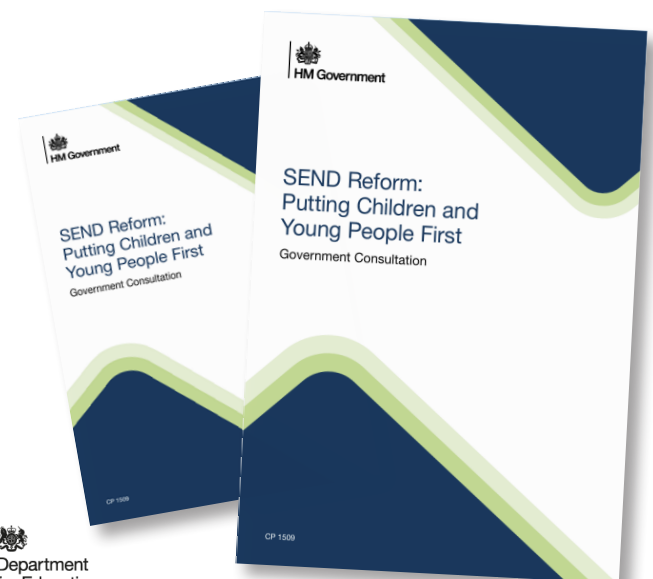
In this Newsletter:

How was the White Paper really crafted?

EHCP Consultations: Schools' Rights and Duties When Responding

The 'Section 19 duty' – Whose duty is it?

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



Department for Education

SEND REFORM 
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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 22 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.



Schools training packages



Our SEN Legal schools training packages offer a tiered, fixed-fee service designed specifically for educational settings, providing clear, actionable guidance on legal responsibilities, best practice, and risk reduction.

SILVER training package
 £700 (+VAT)

One two-hour training session covering:

- ✓ The EHCP process*

GOLD training package
 £1950 (+VAT)

Three two-hour training sessions covering:

- ✓ The EHCP process*
- ✓ Annual reviews
- ✓ Statutory consultations

PLATINUM training package
 £3000 (+VAT)

Five two-hour training sessions covering:

- ✓ The EHCP process*
- ✓ Annual reviews
- ✓ Statutory consultations
- ✓ Reasonable adjustments, disability discrimination and exclusions
- ✓ Independent review panels

*including EHC needs assessment, the EHCP itself and an overview of the SEN Tribunal.

EHCP consultations: Schools' rights and duties when responding



By Richard Nettleton, Associate Solicitor & Director

When a Local Authority (LA) proposes to name a school in Section I of an Education, Health and Care Plan (EHCP), it must first consult the school's governing body, proprietor, or principal. This process is central to ensuring that placements are lawful, appropriate, and sustainable.

School consultations sit within the statutory framework of the Children and Families Act 2014 and the SEND Code of Practice. Where a parent or young person requests a school or college of a type listed in **section 38(3)**, the LA must usually name that institution unless it can demonstrate:

- The placement is unsuitable for the child's age, ability, aptitude, or special educational needs;
- It would be incompatible with the efficient education of others; or
- It would be incompatible with the efficient use of resources (section 39).

The Code of Practice expects schools to respond to consultations within 15 days. However, it is not expressly clear whether this refers to calendar days or working days.

What makes a lawful consultation?

A meaningful consultation must comply with public law principles, including those set out in **R v London Borough of Brent ex parte Gunning**.

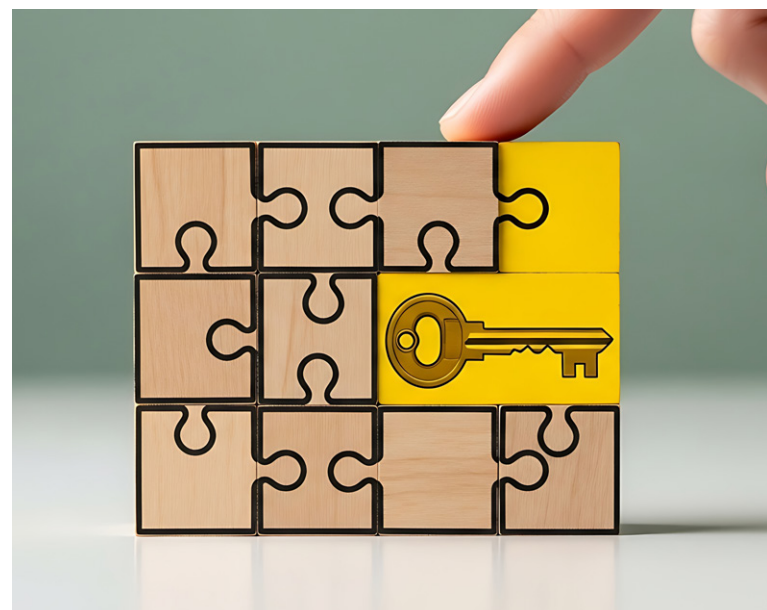
For consultation to be lawful, the school or college must receive:

- The draft EHCP; and
- The supporting evidence, including Section K reports

This enables the school to understand:

- The child's identified needs (Section B); and
- The specified provision required to meet those needs (Section F)

If key information is missing, the school should request it and clearly record this in its response.



How should schools respond?

When replying to a consultation, schools and colleges should ensure that their response is evidence-based and legally focused. In particular:

- Statements about whether the school can or cannot meet need should be linked directly to specific needs in Section B, provision in Section F, and supporting evidence in Section K. Bare assertions such as "we cannot meet needs" will carry little weight
- If the school considers the placement unsuitable, it should explain why and identify what would be required to make the placement viable — or indicate the type of provision that may be more appropriate
- The school should outline the reasonable adjustments it has considered and explain why these would, or would not, be effective

The Local Authority's duty

The duty to consult is not a mere formality. An LA must conscientiously consider the school's response before deciding whether to name it. This is a public law duty.

However, experience — and success rates in the SEND Tribunal — suggest that the statutory tests in sections 33 and 39 are frequently misapplied. In some cases, this appears to result from attempts to maintain a mainstream placement even where the evidence suggests the school cannot meet the child's needs.

Recent case law has also demonstrated that an LA which effectively ignores a detailed and reasoned objection from a school may act unlawfully and be vulnerable to challenge by way of Judicial Review. Ultimately, LA decision-making should clearly demonstrate how it has balanced:

- Parental preference;
- The child's needs;
- Efficient education of others;
- Efficient use of resources; and
- The evidence provided by the school or college

What Happens Once a School Is Named?

Once a school or college is named in Section I of an EHCP, it will usually be under a duty to admit the child. However, where a school has serious, evidence-based concerns, sensible steps may include:

- Where parents are appealing to the SEND Tribunal (for example, where professionals agree that a specialist placement is required), supporting the parents' appeal by ensuring that the school's witness statement accurately reflects its concerns, rather than simply adopting the LA's position
- Prompt dialogue with the LA, requesting that it review the decision
- Escalation via the Department for Education complaints procedure
- In appropriate cases, exploring Judicial Review

Recording and Transparency

Whatever route is taken, it is critical that the school's position and reasoning are clearly recorded.

While a school or college is not under a legal obligation to share its consultation response with parents (unless a Subject Access Request is made), parents will usually obtain a copy in due course. Delaying disclosure — or relying on the full 30-day response period under the Data Protection Act 2018 — is rarely a productive use of time and may damage relationships.



✓ Good practice for schools

A well-managed consultation process supports lawful decision-making and better outcomes for children, families, and schools. Schools and colleges should therefore ensure they:

- 1 - Have a clear internal procedure for triaging consultations and tracking deadlines.
- 2 - Use a template that prompts cross-reference to Sections B, F, and K, and to the statutory tests in sections 33 and 39.
- 3 - Keep detailed notes of key discussions with the LA, parents, and other professionals — particularly if an appeal to the SEND Tribunal is likely.
- 4 - Understand the available routes to challenge a decision if there is evidence that the LA has acted unlawfully.



The 'Section 19 duty' Whose duty is it?

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 have 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. What we are often seeing, however, is that schools are being required to fulfil this duty as opposed to Local Authorities. Schools are often required to step in due to the Local Authority refusing to provide support and leaving parents with no other options. It is therefore important that schools are aware of the Section 19 duty and when this applies.

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.

Importantly, the legal duty is on the Local Authority only and not a school or any other professional body. Whilst Local Authorities can work with schools and other organisations to fulfil the duty, it remains their legal duty to ensure such provision is in place.

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

If a child is permanently excluded, the Local Authority's duty begins from the sixth day after exclusion. Schools from the first day to the fifth day remain responsible. After this point, it is the Local Authority's duty. A Local Authority will be well aware of the Permanent Exclusion having taken place following the notification that is required.

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 from school. Government guidance says this should be no later than 15 days.

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What is happening in reality?

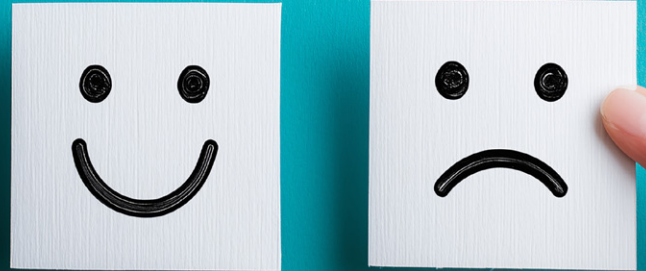
The Local Government Ombudsman has reported a sharp increase in parental complaints about failures to arrange alternative provision — from 38 complaints in 2021/22 to 400 in 2024/25, which is noted to be just a ‘small fraction’ of the disputes that are ongoing between parents and Local Authorities. In 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

It is therefore an area where there is considerable dispute between parents and Local Authorities and schools are often left in the middle of this, with both Local Authorities and parents seeking them to put education in place due to the misunderstanding (or perhaps not for LAs) of the Section 19 duty.

Parental complaints about failures to arrange alternative provision...



38
2021/22



400
2024/25



For example, I have seen a school being required to fund online tuition for a child who was unable to attend the school for several years due to anxiety and school refusal. The online tuition arrangement has been in place during the entirety of this time whilst parents are seeking an EHC Plan and an appropriate special school to be named. During which the school have had to fund this provision out of their already incredibly stretched resources. This is despite the law being clear in these circumstances - it is the Local Authority’s legal duty to ensure this support is in place, which includes funding. This situation is not uncommon, and we have seen repeated similar situations arising.

Schools will have their own monitoring and notification arrangements in place for children who do not attend school and miss education. They will also be deploying various strategies and adjustments to ensure the child can attend the school. However, in such situations, where this is not possible, the Section 19 duty will apply and the Local Authority becomes responsible in such situations. The Local Authority has greater resources and provision available to them to ensure the child can receive a suitable full-time education in such situations. In such situations therefore, schools and parents should be working in unison to ensure Local Authorities meet their legal duty.



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 sends a strong message to Local Authorities that any decision to cease to maintain an EHCP on the basis of a move out of area must be approached with considerable care, particularly where there is clear evidence that the move is temporary.

Temporary moves — even lengthy ones — do not automatically bring LA responsibilities to an end. Where a looked after child is placed in a different LA area, the original LA will retain responsibility unless it can be established that the move is intended to be and is actually permanent. The same applies where there is a change of residence for parents with shared parenting agreements.

The required processes must be correctly followed and where consultation is required, there must be a genuine attempt to engage with the family / young person involved.

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.



We'll be
back
soon!