

SENlegal

NEWSLETTER



Professional's Newsletter Edition 16



For Professionals, Schools and Academies working in the SEND sector.

In this Newsletter:

SEND Tribunal Hearing update - User Group meeting

"To thine own self be true"- the plight of a Non-Maintained Special School

Sectioning and Care & Treatment plans

HACS Glitz and Glam is back!



www.senlegalforschools.co.uk  

SENlegal Your legal experts on all matters SEND. Call us today on 01284 723952

SEND Tribunal Hearing update

- User Group Meeting

By James Brown, Solicitor



As many of our readers will have seen online, parental appeals which are currently being submitted to the SEND Tribunal are being returned with hearing dates in September 2023. At the time of writing, the most recent listing we have received is 18th September 2023, with the date for serving all of the evidence in the appeal listed for August 2023. The Tribunal are currently operating a 50-week timetable.

Understandably, this is causing extreme concern for parents and users of the Tribunal alike. How can it be just for a parent to have to wait nearly 12 months for their Appeal to be heard to resolve disputes concerning their child's education?

The simple answer is that it is not. However, the Tribunal is clearly struggling to cope with the demand for hearing dates which is increasing to over 13,000 appeals a year, with limited Judges and Panel members available to hear the appeals, but the situation is unacceptable.

A further concerning point is what will happen for parents who are left with a dispute when it comes to phase transfer next year. If hearing dates are being listed for September 2023 now, where will they be when these issues arise next year?

Fresh from the User Group meeting held on 13th October 2022, **the Tribunal have confirmed there are dates available in April, May, June and July for phase transfers appeals to be heard.** Therefore, this should, 'in theory', resolve the issues with phase transfer appeals. It has also been confirmed if all of these dates are not taken up by phase transfer appeals, the Tribunal will bring other appeals forward.



What can be done about this?

Two obvious answers spring to mind – 1) Local Authorities stop making absurd decisions in the first place and reduce demand. 2) The Tribunal return to shorter timetables and list cases sooner. Both unlikely to happen anytime soon, especially point 1.

continues on next page...

However, we have set out some useful practical points below which may assist you when having to navigate these delays & working with parents:

1 - If you are aware parents have not had their decision letter from the Local Authority following an Annual Review for example, you should alert parents to their rights to Judicial Review and the Pre-Action Protocol process to obtain these overdue decision letters. This is usually the most efficient way for parents to obtain this. Without a decision letter, parents cannot enter the Tribunal system and will face further delay.

2 - Local Authorities delegate their responsibilities to hold and facilitate Annual Reviews to schools. You must ensure all of your Annual Reviews are happening in a timely manner, particularly phase transfer pupils. Delaying the Annual Review, delays parents getting to the Tribunal and resolving any issues.

3 - The Tribunal are listing cases on a priority order basis. If you are aware of children who have been excluded or who cannot physically attend school for other reasons, they will be given priority. Therefore, parents must be informed of this. Further, if there are pupils at serious risk of permanent exclusion or placement break down, this should also be documented very clearly, so this can be taken into account by the Tribunal.

4 - Tribunal hearings that are being requested to be considered on the papers only are being considered sooner than those that require a live hearing. All EHC Needs Assessment appeals are listed for a paper hearing, but it is possible to have refusal to issue and against content appeals listed on the papers also. Whether it is advisable to proceed with a paper hearing needs to be considered very carefully by parents. However, you as schools and professionals can all help with this, by ensuring any information is thoroughly prepared and available as soon as possible.

If you would like to discuss how the Tribunal hearings may impact you as a school or a professional assisting a parent moving forward, please do get in touch.



"To thine own self be true"

- the plight of a Non-Maintained Special School

By Richard Nettleton, Solicitor

Every month, almost without fail, we seem to come across the same issue regarding the lack of understanding of what a Non-Maintained Special School and how its status interacts with being named in an EHCP.

While Non-Maintained Special Schools are different in terms of funding, fees, and taxable status, in terms of being named in an EHCP by a Local Authority they are no different to Maintained Schools, Academies etc.

What seems to generate confusion is claims that the school is an Independent School, or a Non-Maintained Special School is a type of Independent School and therefore to be named inside an EHCP, an offer of place must be made first before the Local Authority or SEND Tribunal can name the school.

This is incorrect and is confirmed by **Section 38** of the **Children and Families Act 2014**. Once a school (whose type is included on the list contained within this section) has been consulted, the decision rests with the Local Authority regarding the naming of the school in the final EHCP. The Tribunal has the same power to do so.



If the Non-Maintained Special School in question is named in **Section I**, the duty under **Section 43** of the **Children and Families Act 2014** applies. The only way a Non-Maintained Special School is able to prevent attendance when they disagree with the Local Authority's or SEND Tribunal's decision is either through complaint to the Department for Education or launching Judicial Review proceedings.

If there is any doubt in a situation like this, a check on www.get-information-schools.service.gov.uk will provide the answer sought regarding the type of school in question.

In summary, if you are informed that a Non-Maintained Special School must offer a placement before it can be named by your Local Authority or the SEND Tribunal in **Section I** of the EHCP, the position is incorrect.

Want to find out more about the topics covered in our Newsletter?

 01284 723952

 customerservices@senlegal.co.uk

 www.senlegal.co.uk





Inclusive Football

SEN and Disability

Every other Sunday 11:30-12:30
on the 3G Pitches, Cambourne

11th Sep, 25th Sep, 9th Oct, 23rd Oct
6th Nov, 20th Nov, 4th Dec, 18th Dec

Sponsored by: SENlegal



For more information about our Parability Football sessions in Cambourne, please contact ctfc.eyo@gmail.com

Join Hillingdon Autistic Care and Support at our next fundraiser

GLITZ AND GLAM

LIVE MUSIC FROM THE ESTRELLAS

- CASINO - AUCTION -

TICKETS £40

Tickets include welcome drink and evening buffet

SATURDAY

NOVEMBER 12TH 2022

7:30 PM - 1am

McGovern Park, 315-384 W End Rd, Ruislip HA4 6QX

RSVP to enquiries@hacs.org.uk
020 8606 6780



Free Legal Advice Webinars for Parents, Schools & Professionals.

Now available to watch back on... **You Tube**

Celebrating
15,000+
video views!

Thanks to everyone who has visited our YouTube channel

www.youtube.com/SENlegal

SENlegal

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**.

Sectioning and Care & Treatment plans

By Melinda Nettleton, Principal Solicitor



A frequent question we are asked by parents and professionals alike, is what the lawful basis of sectioning under the Mental Health Act and what rights for support are there after this has been decided.

Engagement with **The Mental Health Act (MHA)1983** can occur through **Section 2** of the **MHA** (known as being sectioned) involving compulsory admission to hospital for assessment and (possibly) medical treatment in the interests of your own health and safety or the protection of others. **Section 2** is on the recommendation of two doctors and lasts for a maximum of up to 28 days.

This can be converted to a **Section 3 MHA** compulsory admission for treatment. This lasts for a period of up to six months, but can be renewed for further periods of detention.

After a **Section 3** detention, a **Section 117 MHA** Care and Treatment Plan providing free after care services should follow. It doesn't always, and you may need to take action to get one.

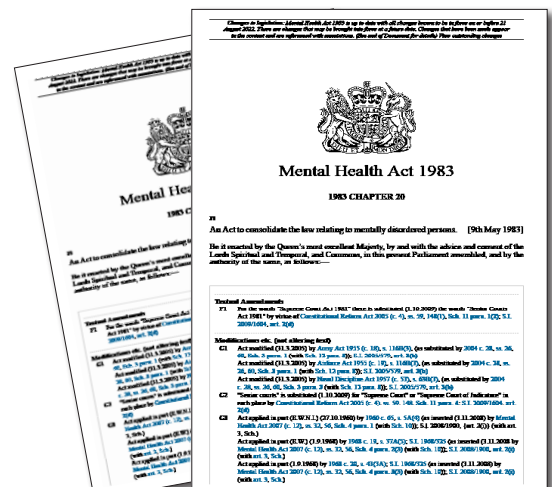
Under **Section 3**, there is an entitlement to free after care services, including:

- ✓ Health care.
- ✓ Social care and employment services
- ✓ Supported accommodation.
- ✓ Services to meet cultural and spiritual needs.
- ✓ Specialist accommodation.
- ✓ Accommodation.

Section 117 (6) provides that “*after care services*” means:

- (a) Meeting a need arising from or related to the person’s mental disorder.
- (b) Reducing the risk of deterioration of the persons mental condition (and accordingly, reducing the risk of the person requiring emission to hospital again for treatment for mental disorder).

continues on next page...



[Click here to read The Mental Health Act 1983](#)

Section 117 is designed to prevent a revolving door of discharge and readmission. Unfortunately, **Section 117** Care and Treatment Plans are not always provided when they should be, and if they are not, action needs to be taken, to prevent the “revolving door” situation arising.

The **Section 117** Care and Treatment plan is supposed to cover eight areas and there is a separate section setting out:

- ✔ Services, date when they will be provided.
- ✔ Who is responsible for the delivery.

The eight areas are:

- (i.) Finance and money.
- (ii.) Accommodation.
- (iii.) Personal care and physical wellbeing.
- (iv.) Education and training.
- (v.) Work and occupation.
- (vi.) Parenting or caring relationships.
- (vii.) Social, cultural, and spiritual.
- (viii.) Medical and other forms of treatment.

Whilst there should be a care co-ordinator, when going to a Planning and Discharge meeting think about each heading. Consider what is needed and ask what provision is being putting in to address each area. It is needs and provision just like the old **Section 2 & 3** of a Statement of Special Educational Needs and **B & F** of an EHC Plan.



The young person will not be entitled to anything if it doesn't go into the services section. The date on which it is going to be provided needs to be included so that you are then in a position to challenge it either by Judicial Review or through Complaints Procedures or the Health Service Ombudsmen. There is a Code of Practice with after care planning in chapters 33 & 34. Hospitals are obliged to follow the code unless there in good reason to depart from it. **R v Islington LBC Ex Parte Rixon 1997 ELR 66, 1996 3 WLUK 251**. If Judicial Review is the chosen option, and with expedition that can be very fast, it has to be started within three months of the discharge because there is a strict time limit.

If you require any further advice on these points, please do get in touch.

EHC Plan Health Check

Offering you personal expert advice on your draft or final EHC Plan from our team of specialist Solicitors. We'll check your plan and offer guidance on areas that would benefit from being amended or added to.

- ✔ Our legal team will report their findings to you via telephone or email, depending on your preference
- ✔ We aim to turn around all reports within 7 days
- ✔ We charge a one-off fee of just £300 (+VAT)

For more information, call us on **01284 723952**



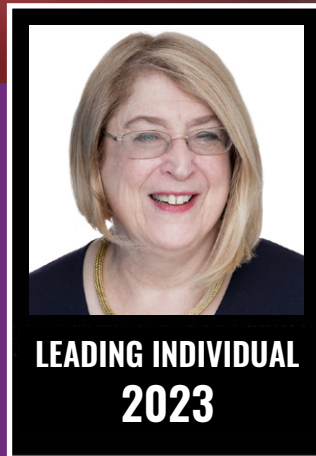
We've done it again!...

We're delighted to have been ranked in this years Legal 500.

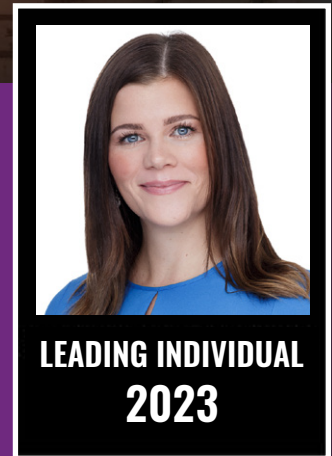
Thank you to all our colleagues and clients for your wonderful testimonials.



Nicole Lee
Senior Solicitor



Melinda Nettleton
Principal Solicitor



Hayley Mason
Senior Solicitor