SENlegal NEWSLETTER

Issue 23 for Schools and Professionals working in the SEND Sector.

In this Newsletter:

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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 you are supporting parents whose child or young person is not receiving the provision specified in their EHCP — which they are legally entitled to — the 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.

Or perhaps you are working with parents who have requested an EHC needs assessment for their child and the LA has failed to comply with the statutory timeline. Under **Regulation 5(1) of the SEND Regulations 2014** the LA must inform the parent(s) within six weeks of receiving a request whether it intends to carry out the assessment. Failure to do so would constitute a breach of the LA's statutory duty.

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

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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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.

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.

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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.

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.

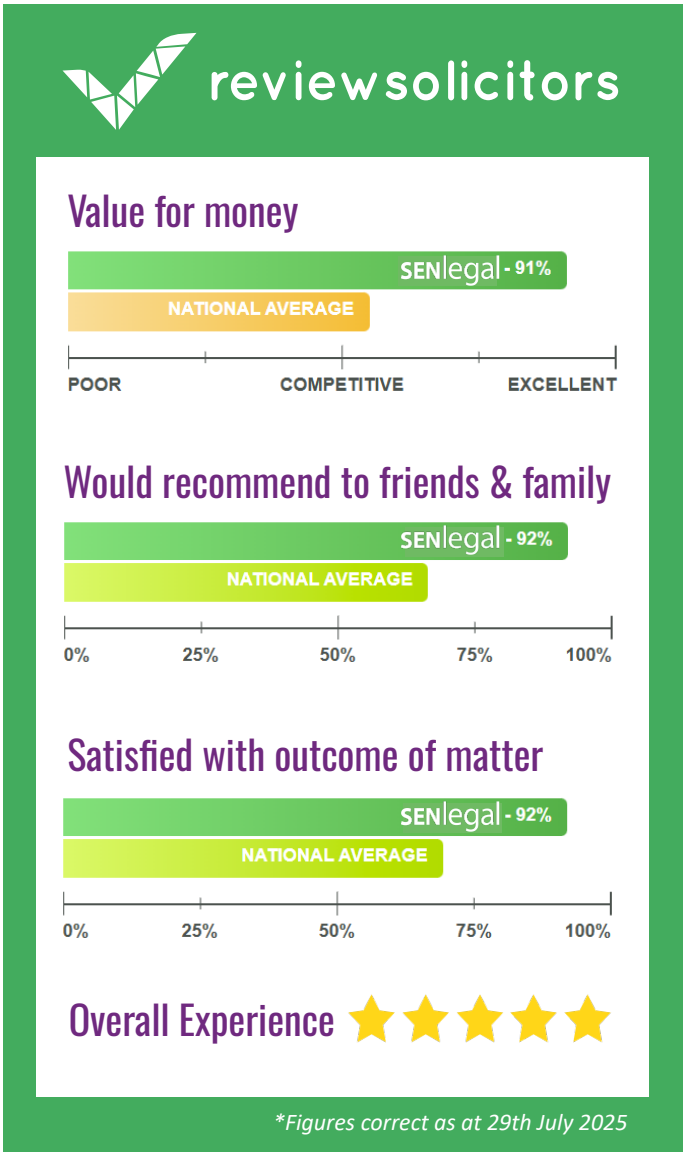
Conclusion

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.



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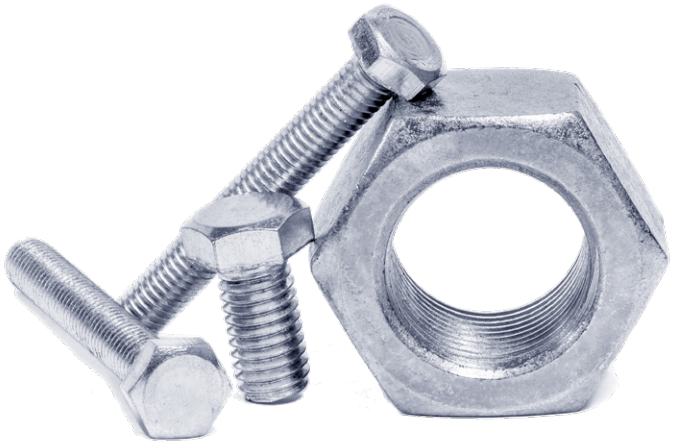
'One size fits all' is not acceptable for Post-16 Transport



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: Implications for Families of Children with Special Educational Needs

By Liam Molloy, Paralegal

In a recent and closely watched judgment, the High Court dismissed a series of judicial review claims challenging the lawfulness of imposing Value Added Tax (VAT) on independent school fees. This policy, first introduced by the Government earlier this year, has raised significant concerns, especially among families whose children with Special Educational Needs and Disabilities (SEND) attend independent or specialist settings due to the absence of suitable alternatives within the maintained sector. This article outlines the Court's reasoning, the practical consequences of the decision, and the legal options still available to affected families.

The legal challenge

In June 2025, three separate claimant groups- including independent schools, faith-based organisations, and parents- brought judicial review proceedings arguing that the imposition of VAT at the standard rate of 20% on independent school fees was unlawful. The claims centred on alleged breaches of the European Convention on Human Rights (ECHR), including:

- **Article 2, Protocol 1** - The right to education.
- **Article 9** – The right to freedom of thought, conscience, and religion.
- **Article 14** – The prohibition of discrimination, specifically on disability grounds.

The Court acknowledged that these rights were indeed engaged. It was accepted, for example, that some pupils with SEND may no longer be able to access appropriate education if rising costs render their placements financially unviable. However, the Court ultimately dismissed the claims on all grounds.

The court's finding

In its judgment, the High Court reaffirmed the principle that Parliament enjoys a broad margin of appreciation in matters of fiscal policy. The Government's rationale, to raise revenue to reinvest in the state education system, including enhancing SEND provision; was deemed a legitimate objective. Key findings included:

- The right to education under Article 2 of Protocol 1 does not encompass a right to private education, even for children with complex needs.
- The VAT policy, while recognised as financially burdensome for some, was not found to constitute unlawful discrimination. Any disparate impact was justified by the policy's broader aim of improving educational access and quality within the public sector.
- There is no legal obligation on the Government to exempt pupils attending independent specialist or faith-based schools from the scope of the VAT regime.

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Relevance for SEN Families

The implications of this ruling are particularly acute for families of children with SEND. Many such pupils attend independent or non-maintained specialist schools because their needs cannot be met in mainstream or local authority-maintained provisions. For families who do not have an Education, Health and Care Plan (EHCP), or who self-fund placements or therapies not specified in Section I of the EHCP, this policy change may render continued attendance financially unsustainable.

Available Legal Remedies

Although the High Court has foreclosed one avenue of legal redress, families are not without recourse. Several legal and procedural mechanisms remain available:

- **Appeal to the First-tier Tribunal (SEND)**: Families may challenge a Local Authority's refusal to name an appropriate placement in an EHCP, particularly where no suitable state provision exists.
- **Request an Early Annual Review:** Where circumstances have materially changed—such as a sudden inability to fund an existing placement—a review may be warranted under the SEND Code of Practice.
- **Seek Legal Advice Promptly:** Where a child's educational placement is at risk due to funding issues or local authority inaction, early legal intervention is advised to prevent disruption to education.

Conclusion

This decision underscores the tension between economic policy and the rights of children with SEND. While the judicial review has clarified the legality of the VAT policy, it has also reinforced the urgency of safeguarding access to appropriate education for all children, regardless of need. At SEN Legal, we remain committed to supporting families through these legal complexities, ensuring that each child's entitlement to suitable educational provision is upheld in both law and practice.

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The experts who helped desperate parents & young person

"SEN legal have been vital to our circumstances and the only significant organisation that have actually helped in a timely manner, even with our LEA's underhanded tactics, and doing everything they could to delay our case despite overwhelming evidence.

We have recently had to use SEN Legal again due to our child transitioning to specialist College with our LEA being underhanded a second time, removing sections of our child's EHCP without justification or evidence. Due to this we know that at each EHCP review from now on, we will be using SEN Legal to help our child (now a young adult) keep all the sections of their EHCP which they still need.

We attribute our success to getting our child the right support they need to SEN legal."

- Client review, 21st July 2025

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