

# SENlegal

NEWSLETTER



Issue 18 - November 2023



## In this Newsletter:

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What makes a good Educational Psychologist assessment?

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Court of Protection - What's new?

---

Education Otherwise than at School (EOTAS) - delivery of provision

---

Preparing for Phase Transfer

---

SENLegal is recognised again in the 2024 Legal 500 rankings!



...read more on page 6!



James Brown, Solicitor

**SENlegal** Solicitor James Brown explores 'what makes a good Educational Psychologist assessment?' with expert witness, Ms Josephine Durling.

Parents and professionals at schools alike are coming to us with concerns about how the Local Authority's Educational Psychologist (EP) assessment has been carried out, often as part of the EHC Needs Assessment process, but in other situations too.

Concerns are not just limited to the delay in actually receiving contact from the EP Service (which is a separate issue altogether!), but also the methodology. Both parents and schools need to be aware of what makes a good EP assessment.

With this in mind, we thought it would be best to ask this question to an Educational Psychologist themselves. Josephine Durling, an independent EP with over 40 years of experience and one of the leading psychologists appearing within the SEND Tribunal, has kindly agreed to help and share her views:

**Q What is the role of an Educational Psychologist in your view and how do such assessments help children & parents?**

An Educational Psychologist plays a crucial role in the field of education by focusing on the psychological aspects of learning, development, and educational processes. Their primary responsibilities include:

- a) Assessment
- b) Diagnosis
- c) Consideration of intellectual ability (strengths and weaknesses when learning) when determining educational needs
- d) Intervention Planning when considering current attainment levels and;
- e) Consultation with school staff and other multi-disciplinary teams in order to consider the provision and type of school placement the child requires in light of the evidence collected during assessment.



The purpose of assessment using standardised tests is to understand the child's cognitive, emotional and social functioning. In addition to the standardised tests, observations, interviews and other evaluation methods are used. Together they provide a full picture if the parent also provides a full background of health and school history. This volume of data is necessary in order to fully understand a child's learning capabilities.

Consideration of intellectual ability is essential in order to determine not only the longer-term possibilities of potential, but also the rate at which a child is most likely to learn.

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Many children are currently placed in mainstream primary schools for example, at their parents' requests and over the course of time they become aware that their child has not kept pace with learning and are described in reports as 'working below expectations,' or 'working toward expectations' or 'working at the expected level.' Some children's parents are told that their child is 'working in advance' of the expected level.

This type of description can encourage parents to believe that there is not much wrong and unless their actual cognitive potential is known they can continue to believe this for many years. What this means is parents will not have any reason to believe that more support of the right kind is essential. Even if they did identify a need, they would not receive the 'right kind of support' unless they can produce the evidence that is necessary to do so – i.e. an Educational Psychologist's assessment report detailing not only the discrepancy between potential and level of attainment and ruling out other potential factors that may be causative.

**Q Is preparation required before an Educational Psychologist completes an assessment?**

Yes. It is essential. A full background history must be taken by the Educational Psychologist to determine the child's school progress throughout the years and every report from therapists and clinicians who have seen the child in the past must be provided in good time before the assessment in order that the Psychologist can determine what battery of tests is required.

**Q Where should the assessment take place?**

The Educational Psychologist will visit the child in school and ask to see the tracking record that determines what support has been put in place over the years and the levels of progress achieved in each area of learning. The Educational Psychologist will collect the class teacher's and school SENCO's views of the child in order to gain an understanding of how the child is being assessed in comparison with peers of the same age in the classroom.

The Educational Psychologist will need the standardised assessments to take place in a quiet and comfortable place for the child. This could be at school or at home or at the Psychologist's clinic. If the child is not attending school, it will of course not be possible to carry out the assessment there, so this will be at home or elsewhere suitable.



**Q Is direct contact with the child and Educational Psychologist necessary? Are there standardised assessments that should take place?**

It is not possible to complete a full standardised assessment of a child's cognitive and attainment levels via video. Whilst some tests were able to be administered to children during lockdown, this has never been ideal and in my view should never be recommended. The Educational Psychologist is gathering more than just the test results when an assessment is performed. The psychologist will be measuring the child's social skills, their ability to understand the questions put to them, their ability to complete the instructions given them, their expressive vocabulary, their motivation to continue working when the tasks become difficult, their general friendliness and their willingness to please and cooperate. All this evidence is essential in the task of determining the difficulties the child encountered when learning.

I prefer to use the WISC-V UK standardised battery of cognitive tests. Not only are these the most reliable and valid, they have also been standardised against the WIAT-III UK achievement tests. This means that direct statistical analysis can be performed to determine whether there is a statistically significant discrepancy between cognitive ability and attainment that requires attention and provision.

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## Q What are the key elements of the report produced following the assessment?

Any report must contain a full assessment of the child’s cognitive abilities. This can be achieved by the WISC-V UK or the British Ability Scales. The latter are usually used by the local Authority Educational Psychologists. If the full complement of tests are administered this will provide the most important set of information to enable educationalists to understand the child.

Next in importance are the standardised tests of attainment – these tests must cover, Reading Comprehension and Sight Word Reading (for children with suspected Dyslexia the Pseudoword Decoding Test (WIAT-3 UK) should be added). There is a phonics test in the British Ability Scales that can be used to determine the child’s current levels of difficulty with letter-to-sound correspondence. Written language tests that involve essay or composition writing are necessary to determine the child’s written language skills – handwriting, sentence construction, spelling when writing and grammar.) Spelling Tests at the level of the single word are necessary to determine the precise area of difficulty the child is experiencing.

Numeracy tests include paper and pencil tests of the four operations of number (plus, minus, multiply and divide).

- Maths problem solving, involving questions in sentences with arithmetical calculations to complete.
- Mental Arithmetic questions.
- Maths Fluency tests.

Each strength and weakness provides a complexity that describes the child’s needs and also determines the provision required. Tests alone do not necessarily provide the full picture and the observations of the child and discussions with other professionals assist in forming the full view within the report. The report must be totally independent in my view and there must be no conflict of interest. It is essential that the child’s abilities and attainment levels are described without reference to what is only available in a given setting. The report must not be written for a particular school and provision must be set out specifically and quantified. Typically I cover the 4 key areas of provision – cognition and learning, communication and interaction, sensory and physical and SEMH.

## A BIG Thank You!

To Ms Josephine Durling for taking the time to provide us with the information in this article.

For more information and advice on assessments in general, please contact Ms Durling at:

[josephine.durling@icloud.com](mailto:josephine.durling@icloud.com)



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# Court of Protection - what's new?

Something we can help with here at SEN Legal is seeking a Deputyship Order for Health & Welfare and Property & Affairs (see our [newsletter article from February 2022](#) for information on this). However, there have been some changes within the Court of Protection this year, specifically to the way that a Property & Affairs application is made.

**Following a successful pilot, from January 2023, Property & Affairs applications can now be submitted online and involve a new mandatory 'upfront' notification service.**

## What does this mean and how do you do it?

To submit a Property & Affairs application online, you can now use an online portal on the Court of Protection gov.uk website (*such use agreed by the court as practicable; see Practice Direction 9H-Property and Affairs Deputyship Applications*).

When completing the online application, the applicant must complete a form on the portal, provide all supporting information (helpful documents that might support P's lack of capacity for example, provide all information on those notified using the new upfront system and provide a statement of truth, acknowledging that the court may contact any of the persons notified of the application. While applications do not have to be made online currently (phased release), the key change that must be followed is the new upfront notification system and any applications that do not follow this will be returned to the applicant.

Essentially, while notifications must adhere to the requirements of the Practice Direction, the 'upfront' notification system means exactly what it says on the tin.

An applicant must notify the relevant people of their intention to become a Property and Affairs Deputy **before** any application is made to the Court of Protection, this includes notifying P (to whom the application relates) themselves.

New forms must be used when issuing notifications and a person notified 'should' complete the relevant form(s), indicating whether they agree or oppose the proposed application, and return it to the applicant within **14 days** from the date of receipt. Responses from those notified is a key change here as before Property & Affairs applications would often be submitted with no responses from those notified unless they specifically objected to the application. Now, the Court of Protection seeks to obtain responses from all those that have been notified in accordance with the Practice Direction. Without these, there could be a delay in a P&A application being issued.

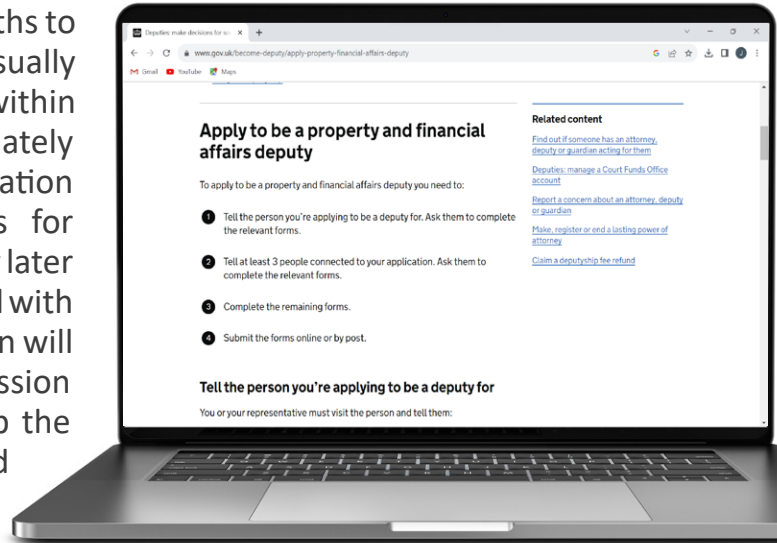
A Property and Affairs application cannot be filed with the court until responses have been received from everyone notified **or** once 14 days have passed since the latest notification was sent out (whichever comes first).

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### Is this a positive change? What are the benefits?

Deputyship applications can often take several months to process due to the amount of paperwork that is usually required to support an application and wait times within the Court of Protection system itself. While unfortunately this remains the same for a Health & Welfare application currently, the new upfront notification process for Property & Affairs firstly means that delays caused by later objections are avoided. These can now be considered with the initial application, or, a fully approved application will not be held up. Benefits of the new online submission is that it is less paperwork heavy which speeds up the process, the forms support improved accuracy and of course reduces our carbon footprint!



### Submitting an application using the new system.

There is rather a lot of preparation involved with the new Property & Affairs Deputyship applications as it is now important to get it right first time with all information and documentation available upon submission. This includes making it clear to those notified what they are required to do. This can be time consuming, complex and seem quite a mammoth task.

The change overall is positive, and we are hopeful that this new system can improve wait times for families who are seeking a Property & Affairs Deputyship Order, particularly where these might be time sensitive.

**SENlegal**



**NICOLE LEE**  
RISING STAR  
2024



**HAYLEY MASON-SEAGER**  
LEADING INDIVIDUAL  
2024



**MELINDA NETTLETON**  
LEADING INDIVIDUAL  
2024





# Change of ownership at **SENlegal**

After 20 years of dedicated service and unwavering commitment to our mission, SEN Legal are embarking on a new chapter in our journey. We are therefore thrilled to announce the appointment of our new owners Hayley Mason-Seager, Senior Solicitor and CEO and Richard Nettleton, Solicitor and Director.

Hayley and Richard are long-established members of the SEN Legal team, both bringing a wealth of experience and their shared vision for the future, which align seamlessly with the core values that have defined SEN Legal throughout its history. Under their Directorship, SEN Legal will continue to not only grow, but thrive.

This transition is not just about change. It is a step towards building a stronger, more innovative and sustainable future for SEN Legal and the families we represent. These changes also see the creation of a Management Board, designed to ensure that all aspects of SEN Legal have a dedicated team to guarantee ongoing development and innovation.

We are therefore delighted to announce the promotion of Nicole Lee with her extensive experience in education law to Head of Legal, safeguarding the ongoing industry leading excellence and growth of the legal team.

Also appointed is Kyra Harvey to Head of Customer Service, who will ensure that SEN Legal continues to provide an exceptional standard of client care, and seamless interactions between the Customer Services and Legal team.

Completing this exemplary team is Karl Adams, in his promotion to Chief Financial Officer, securing SEN Legal's financial future and the ongoing cost transparency and surety clients both need and deserve.

Our commitment to providing exceptional legal services remains unwavering. You can expect the same dedication to quality, innovative working, and client satisfaction that you've come to trust over the years. Thank you for your continued support as we embark on this exciting new phase together. We look forward to building on the success of SEN Legal and working with as many families, charities, and parent groups as possible in future to achieve excellent outcomes.

We would like to take this opportunity to express our deep gratitude to Founder, Melinda Nettleton for her vision, tireless efforts in establishing SEN Legal and laying a solid foundation upon which the new Management Board can continue to build.



**Hayley Mason-Seager**  
Senior Solicitor & CEO



**Richard Nettleton**  
Solicitor & Director



**Nicole Lee**  
Head of Legal



**Kyra Harvey**  
Head of Customer Services



# Preparing for Phase Transfer

**It's that time of year again – the leaves are turning and Phase Transfer clocks are ticking.**

While February seems a long time away, for your Phase Transfer cohorts, the timescales for the Local Authority's actions in relation to their transfer review begin **now**.

As will be a familiar process to you, the Local Authority is required to hold a Phase Transfer review of an EHC Plan, prior to a child or young person moving to a new phase of education. In order to give schools and Local Authorities ample time to comply with the timescales of the Annual Review process, you'll want to ensure that your Phase Transfer review is scheduled in the Autumn term. While ultimately the Local Authority holds responsibility for ensuring that reviews are held and processes followed, the responsibility being passed to schools is an all too familiar situation. If you haven't begun scheduling Annual Reviews for children in Phase Transfer years, it's really important that you do so now.

## Does Phase Transfer Apply to You?

Your pupils are classed as 'phase transfer' if they are moving between:

- ✓ Relevant early years education to Primary School
- ✓ Infant to Junior School
- ✓ Primary School to Secondary School
- ✓ First School to Middle School
- ✓ Middle School to Secondary School
- ✓ Secondary School to post-16 education
- ✓ Post 16 to Post-19



## The Phase Transfer Review timetable should look like this:

- **23rd November 2023** is the last day on which your Annual Review can be held for a child under 16, and still meet the final deadline.
- **8th January 2024** is the last working day by which the Phase Transfer Review for a young person transitioning into post-16 provision and above can take place to meet the final deadline.
- **Four weeks** after your Phase Transfer Annual Review parents should receive the Local Authority's confirmation that they are amending a child's EHC Plan, and an amendment notice with a draft EHC Plan showing the proposed amendments. Section I of this EHC Plan is required by law to be blank at the draft stage.
- Parents have **fifteen days** to make their comments on the draft amended plan, and give their view on a preferred school for September.
- For children under 16, the finalised EHC Plan must be issued by **15th February** with all of these steps completed. For secondary to post-16 the final EHC Plan deadline is **31st March**. For any transition post-16, it is 5 months before the end of the placement, i.e. **April**.

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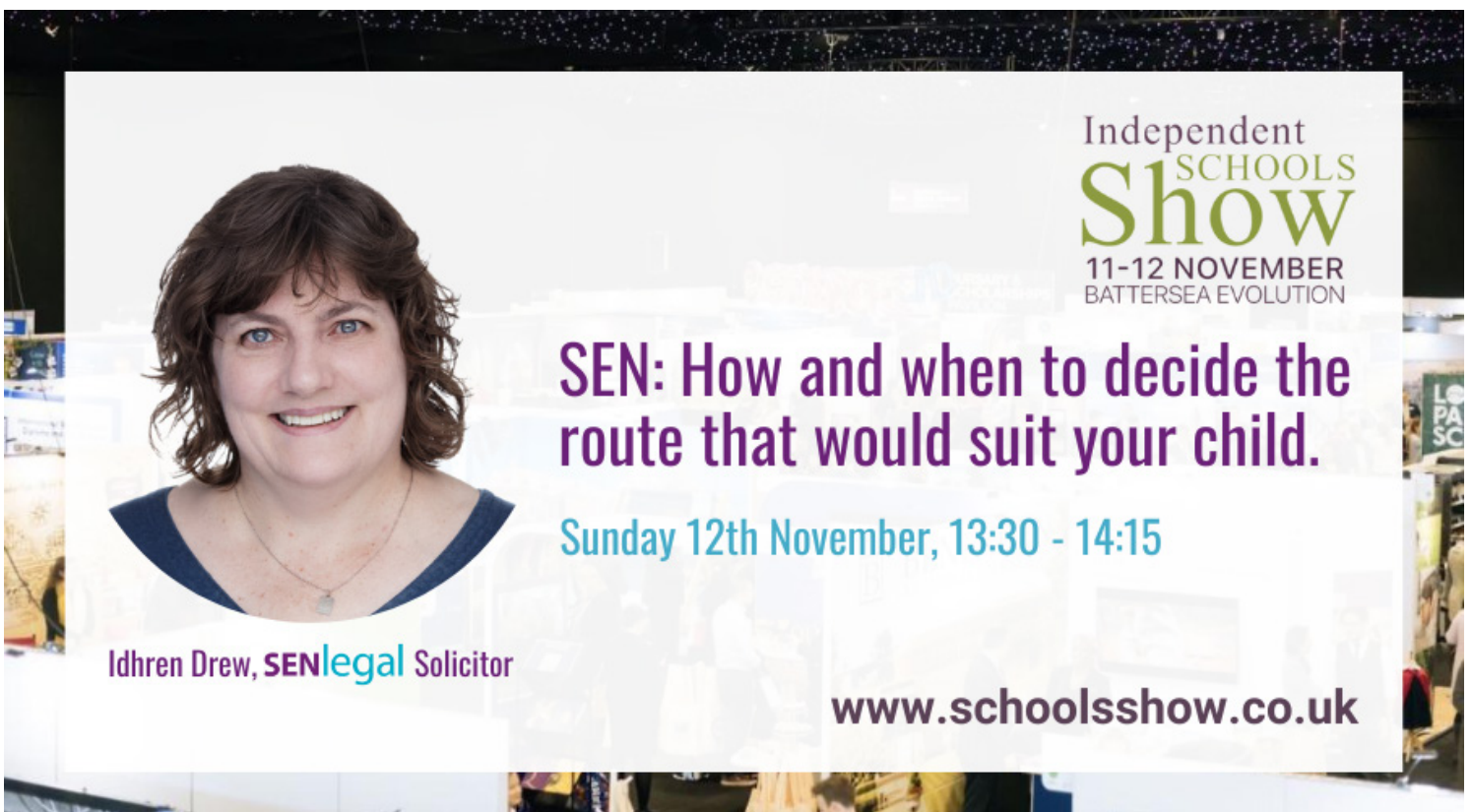


Local Authorities taking a relaxed view of their statutory obligations when it comes to Annual Reviews is an occurrence we know all too well.

The idea behind the timescales beginning in Autumn and the deadlines set in February and March, is for families and children to have ample time to prepare for transition between placements, but also so that parents have time to lodge an Appeal against the EHC Plan and in theory, have this resolved for September.

However, should Local Authorities fail to fulfil their statutory obligations in relation to timescales, it increases the risk appeals won't be seen through the Tribunal system quickly enough for children to have a placement to begin at in September 2024.

It's therefore really important that schools take as much responsibility for ensuring that the review process is followed as possible, and that starts with scheduling Annual Reviews without delay.

An advertisement for the Independent Schools Show. On the left is a portrait of Idhren Drew, a woman with short brown hair, smiling. To her right, the text reads "Independent SCHOOLS Show" in green and black, with "11-12 NOVEMBER BATTERSEA EVOLUTION" below it. The main headline in purple says "SEN: How and when to decide the route that would suit your child." Below that, in blue, is "Sunday 12th November, 13:30 - 14:15". At the bottom right, the website "www.schoolsshow.co.uk" is listed. The background of the ad is a blurred image of an exhibition stand.



## Education otherwise than at School (EOTAS) - delivery of provision.

Some of you may be asking, what is EOTAS? If so, this isn't the article for you (yet). We have published previous information about EOTAS, including an article *EOTAS: Education Otherwise Than At School. What is it, and can I get it?* - Special Needs Jungle with our friends at Special Needs Jungle, and the webinar *Professional's Annual SEN Conference 2020 - Nicole Lee, Specialist Solicitor at SEN Legal* available completely free of charge on our YouTube channel.

For those of you who know what EOTAS is, you may understandably have questions about what the reality of delivering an EOTAS package is, once it is written into a child's EHC Plan.

EOTAS provision in **Section F** of an EHC Plan is legally treated exactly the same as provision which is delivered within a school setting. **Section 42 of the Children and Families Act 2014** places the LA under a duty to make sure that all of the provision in an EHC Plan is in place. The fact that EOTAS provision is delivered outside of a school setting, often in the home environment, does not change this duty. It is still the local authority's overarching responsibility to make sure that all of the EOTAS provision is in place.

However, the sad reality is that local authorities struggle to comply with **Section 42 of the Children and Families Act 2014, even when a child is in a school and the school SENCO or wider SEND Team is taking care of the organisational side of things.**

When it comes to EOTAS packages, which often require the organisation of lots of individual professionals to make sure provision is delivered in the right way, at the right place, and at the right time, the situation is even more dire.

This appears to have been recognised by the SEND Tribunal, with panels frequently directly asking the local authority what provision will be in place for the management of an EOTAS package, if this isn't already in the evidence or Working Document.

In our experience, many local authorities will offer parents of children with EOTAS packages a direct payment as a default. I have even seen one local authority tell a parent *"this is how we do all our EOTAS packages, so you have to have a personal budget"*. **This is not correct.** A local authority cannot force you to have a personal budget in order to arrange provision, whether it is EOTAS provision or otherwise. Personal budgets are optional, and require the agreement of both parents, and the local authority.

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However, a personal budget is one way in which an EOTAS package can be arranged and funded, giving parents greater autonomy and flexibility about what professionals are used, and how the provision in the EHC Plan is delivered (as long as the specifics of the EHC Plan itself are being followed).

When it comes to the delivery of EOTAS packages therefore, there are 2 options:

### Option 1

**The LA is responsible for the delivery of the EOTAS provision under Section 42 of Children and Families Act 2014.**

The default position is that the local authority is responsible, and that from the date that the EHC Plan is finalised, the local authority should have arranged for all the provision set out in Section F to be in place. Parents do not have to do anything for this to happen.

The local authority cannot fail to deliver provision and then say, “we didn’t deliver the provision, because you didn’t ask us to.” That being said, parents are well advised to push the local authority for progress updates on arrangements for delivery of provision, to make sure that they are complying with their obligations.

### Option 2

**Parents request to manage the EOTAS package themselves through a Personal Budget.**

If parents would prefer to have greater control over the delivery of the EOTAS package, then they can make a request for a personal budget. If agreed, the local authority would comply with the Section 42 obligations by making payments of pre-agreed sums of money, in order for parents to arrange the provision themselves. This would mean that parents are responsible for sourcing all professionals to the provision in the EHC Plan.

This gives a greater option of choosing exactly who works with your child. If you already have tutors or therapists who have been working with your child, a personal budget may enable you to keep these people working with your child.

For more info on this topic, we have released a [blog post](#) discussing the advantages and disadvantages of both options.

## 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.

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