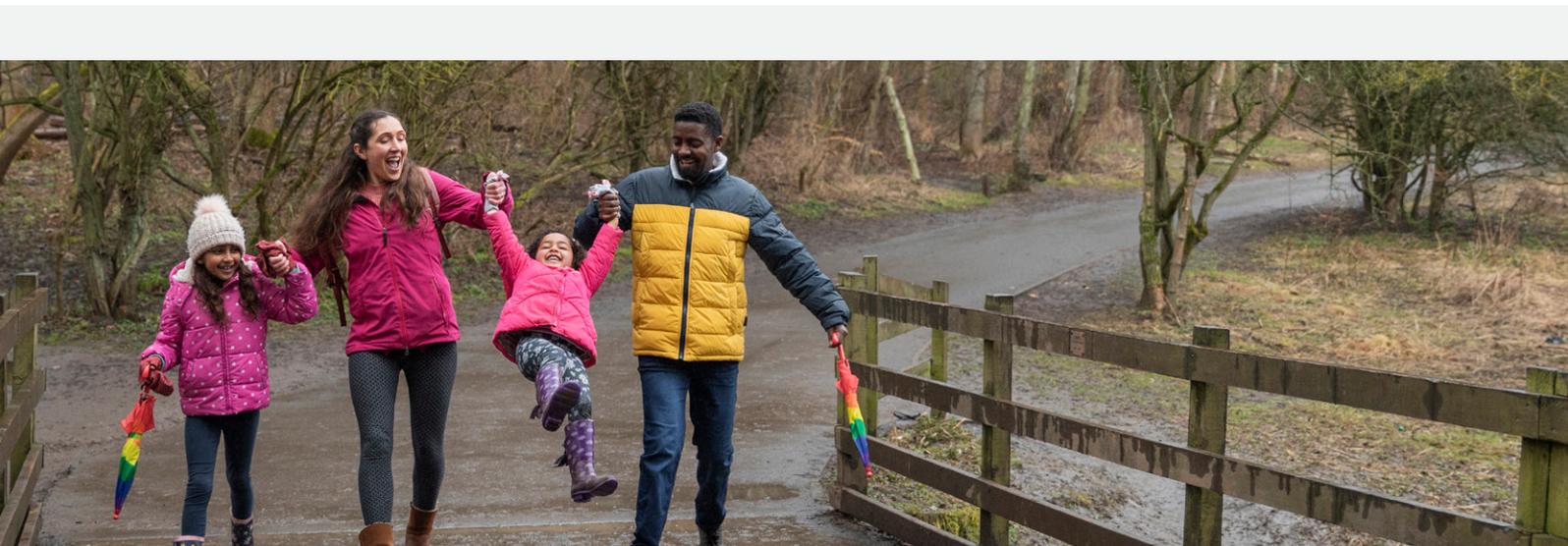


A guide for parents

# Education, Health and Care Plans



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## Every child deserves the best education for their needs

Parents of children with special educational needs (SEN) face challenges in everyday life and the, sometimes overwhelming, task of making sure that their child can realise their full potential in the education system from early years to young adulthood.

Every child has their own specific needs, and without help it can be tough for parents to get those needs recognised, an essential first step in ensuring they are met. The system is complex and information about navigating it isn't always readily available.

Your child is entitled to appropriate support and education authorities are legally obliged to provide it. You don't have to settle for second best when it comes to securing provision for your child's education. Shoosmiths' Education Law team is one of country's leaders in this area of legal advice. We are experienced in working with parents to achieve a successful outcome. We will provide initial advice and explain your options without any fee or obligation.

Our goal is to ensure your child receives the best education for their needs and we will always act with your child's best interests at heart.

## What conditions are within the definition of Special Educational Needs?

Your local authority is obliged to provide additional services for children and young adults who have additional needs such as:

- Sensory impairments
- Physical limitations
- Genetic conditions
- Brain injury
- Learning difficulties
- Neurological conditions
- Emotional and behavioural needs
- Undiagnosed conditions that impact on ability to access education or learning.

Specific conditions include:

- Dyslexia, Specific Learning Disability (SpLD) and Dyspraxia
- Muscular Dystrophy
- Hearing Impairment
- Visual Impairment
- Autism
- Asperger's Syndrome
- Cerebral Palsy
- Cystic Fibrosis
- Down's Syndrome.



## An overview of the SEN system

The current Education, Health and Care Plan (EHCP) regime specifying SEN support came into force in September 2014 and was the most significant change in the SEN system in nearly two decades.

This framework, regulations and code of practice replaced the previous system of Statements of Special Educational Needs and introduced the requirement for a 'local offer' from local authorities. Its purpose was to streamline support for children and young people (0-25 years old) with special educational needs, promote integration and cooperation between health, education, and social care services, and introduce duties in relation to joint commissioning of provision / services.

Under this system local authorities have a duty to consider:

- The views, wishes and feelings of the child and their parents or the young person
- The importance of child, parents or young person participating as fully as possible in decisions relating to the exercise of the relevant function
- The importance of the child, parents, or young person being provided with the necessary information and support to enable such participation
- The need to support the child, parents, or young person to facilitate their development and help them achieve the best possible educational outcomes.

Key changes in the definitions of Special Educational Need (SEN) and Special Educational Provision were also introduced. Those definitions are as follows:

### Special Educational Needs

A learning difficulty / disability which calls for special educational provision. A school age child is deemed to have special educational needs if they have:

- A significantly greater difficulty in learning than the majority of others of the same age
- A disability which prevents or hinders them from making use of the facilities of a kind generally provided for others of the same age in mainstream schooling.

### Special Educational Provision

- Education or training provision additional to or different from that made generally available for others of the same age in mainstream settings. This includes health or social care provision which educates or trains a child.

### What is SEN support?

SEN support is a single category of additional support available in mainstream schools. It replaces Early Years Action / EYA Plus and School Action / School Action Plus. Schools must identify pupils who have SEN and require extra help through SEN support. Schools must also tell parents if their child is receiving SEN support and keep a record of the support they provide.



## Getting an EHCP

The process of getting an EHCP requires an EHC needs assessment to take place.

The legal test: if a local authority is requested to carry out an EHC needs assessment by a parent, young person, school or college, they must consider:

- whether the child or young person **has or may have** special educational needs (SEN); and
- whether they **may** need special educational provision to be made through an EHC plan.

If the answer to both questions is yes, they **must** carry out an EHC needs assessment.

This test is set out in the law (section 36(8) of the Children and Families Act 2014). This means these are the only questions the local authority should be asking when considering whether to carry out an EHC needs assessment.

It is not necessary for the school to make the request, or for them to agree with the request; parents (or the young person themselves) can do this. The request must be in writing with supporting documents confirming diagnosis of needs and lack of progress in school despite interventions.



## Contents of the EHCP

An EHC plan is a comprehensive and legally binding document, incorporating the opinions, wishes and objectives of the child or young person, and their parents (if appropriate). There is no fixed format for the plan, each local authority can develop their own template, but it should specify the following:

- The child's special educational need
- The outcomes sought for the child
- SEN provision required by the child
- Any healthcare provision reasonably required by the child's learning difficulties and disabilities which result in SEN
- Any social care provision reasonably required by the child's learning difficulties and disabilities which result in SEN
- For under 18s, any social care provision that must be made by the local authority
- The plan must also specify other healthcare and social care provision reasonably required by the child.

If the child is in Year 9 or above, the EHCP must include provision to assist the child / young person in preparation for adulthood and independent living.

The EHCP is a powerful tool, but to be truly effective it is important that the wording is as precise as possible, particularly when describing the expected outcomes for the child / young person and specifying the SEN provision required. Below are some examples:

Examples of outcomes:

- One year outcome: Simon will be able to play in an age-appropriate way with at least one child of his own age for most break times at school
- Long term outcome: Simon will be able to socialise safely in the community without adult supervision
- Long term outcome: Simon will be able to indicate a preference, either through gesture or vocalising, from a choice of two options presented as visual prompts.

Examples of good and bad wording:

Bad	Good
<p>Joe would benefit from having differentiated materials in class, such as enlarged font N48 and black / white contrast should be avoided.</p> <p>A qualified teacher of the visually impaired (QTVI) will be available as necessary to advise on strategies and liaise with school staff.</p> <p><b>This is bad wording because provision is vague, not specific or quantified and would not be enforceable.</b></p>	<p>Joe must be provided with differential visual materials across all subjects. Materials must be:</p> <ul style="list-style-type: none"> <li>• On a yellow / black contrast</li> <li>• Font N48 enlarged.</li> </ul> <p>Materials must not be photocopied enlargements as this reduces visibility for Joe.</p> <ul style="list-style-type: none"> <li>• To produce the required materials in the necessary format, Joe will be provided with 5 hours per week of dedicated, non-contact teaching assistant support, who has been trained by Joe's QTVI</li> <li>• Jo will receive input from a QTVI as follows:               <ul style="list-style-type: none"> <li>– 1 hour per week of direct 1:1 teaching and assessment</li> <li>– 30 minutes per fortnight liaison with teaching staff</li> <li>– 2 hours per academic year to attend annual review meeting and other progress / multi-disciplinary meetings</li> <li>– 90 minutes per academic year for report writing, including a full report for the annual review.</li> </ul> </li> </ul> <p><b>This is good working as it is specific, quantified and provides for all the support Joe needs. All of this would be enforceable.</b></p>

## Timeline

The process of getting an EHCP takes between 18 and 20 weeks (depending on whether the child or young person already has a plan in place) from the initial request for an EHC Needs Assessment to the final EHCP being issued. A draft EHCP is issued at between 12 and 14 weeks, at which point the parent or young person can question the contents of the draft plan, ask for a meeting with the local authority to discuss the plan, and tell the local authority the type of school / college they would like and the details of the school / college they would like named in the final plan.

Once the final EHCP is issued, the local authority has the legal duty to secure and fund the provision specified in the plan and ensure it is delivered.

## EHCP reviews

The plan is reviewed annually, starting on the date it was made, to ensure that it continues to represent their needs and aspirations. There is also an obligation to review (and amend if necessary) an EHCP where a child / young person is within 12 months of a transfer between phases of education. The deadlines for these reviews are:

- 31 March in the calendar year of transfer from secondary school to a post-16 institution
- 15 February in the calendar year of any other transfer
- For transfer between post-16 institutions, the review must take place at least five months before the transfer.

## Young people and EHCPs

EHCPs can cover 16 to 25-year-olds. Provision during these years could include:

- School sixth forms (mainstream / special)
- Sixth form colleges
- General further education colleges
- 16-19 academies
- Special post-16 institutions, including residential
- Vocational learning and training providers in the private sector.



## What to do if you're not happy with the EHCP

If you are unhappy with the EHCP, you have several grounds for an appeal, however, you must consider mediation before bringing an appeal to the Special Educational Needs and Disability Tribunal (unless your appeal is on the sole basis of section 1 of the plan – school placement name).

Mediation attempts to resolve disagreements between parents / young people and the local authority. If you decide not to go through mediation, the mediation provider will issue you with a certificate confirming you received information and decided not to proceed. Whether you go through mediation or not, you must have a certificate (of either completion or information) to lodge an appeal with the Tribunal.

You can appeal to the Special Educational Need and Disability Tribunal if you disagree with a decision your local authority has made about your child's education health and care needs or plan, or if they:

- refuse to carry out an EHC assessment or reassessment
- refuse to create an EHCP having undertaken an assessment or reassessment
- refuse to change sections of an existing EHCP which refer to education (sections B, F and I).
- decide your child no longer needs and EHCP.

Health and social care sections of the plan can also be included in the appeal if there are concerns, however the Tribunal only makes recommendations, not orders.

## Enforcement of an EHCP

The following provisions are enforceable under the EHCP:

- Special educational provision: the local authority must secure the special educational provision for the child or young person that is specified in the plan
- Health care provision: if the plan specifies health care provision, the responsible commissioning body must arrange the specified health care provision for the child or young person
- Admissions to a particular institution: there is a duty to admit (including academies).

There is no duty in the Children and Families Act to secure or arrange the social care provision that is specified in the plan, this is governed by The Children Act 1989 and Care Act 2014.

## Why do I need specialist advice?

An EHCP is a complex document, which requires that all needs, outcomes, and provisions are clearly specified and quantified. The process of obtaining the plan is also lengthy and involves a number of agencies. Because it is a legally binding document, if you disagree with any of the content of the plan, or you wish to appeal a local authority decision, it is helpful to have someone on your side with experience of the process of standing up to local authorities and challenging their decisions in front of a tribunal.

Martin Mudge sought our help to get his son Finlay into a specialist school: "If you go into this [challenging an EHCP] without the right kind of advice, you will lose. Shoosmiths' Solicitors were passionate and really knew their stuff. That kind of commitment is very reassuring."

## How can Shoosmiths help?

With many years of experience supporting parents of children with SEN, Shoosmiths' Education Law team knows the difference an appropriate education can make to a child's life and future opportunities.

Our team has considerable expertise in post age 16-19 issues and the cross-over between education, social care and health care which is particularly useful when parents are appealing for a residential school place.

We can guide you through the tribunal process if you want to appeal against the contents of your child's Statement of Special Educational Needs or EHCP and can present your case for you at the hearing. We work very closely with independent experts to provide reports to help with your appeal.

We can offer a full range of education and social care legal advice covering:

- Representation at Special Educational Needs Tribunal Appeals
- Statements of Special Educational Needs and Education, Health & Care Plan (EHCP)
- Statutory assessment
- Specialist (day or residential) school placement
- Special needs support in further education
- Getting social care needs assessed
- Home-school transport
- The rights of parents to provide education at home

We are professional, passionate and on your side. Whether you have concerns that the SEN support isn't good enough at your child's school, are having difficulties gaining an Education, Health & Care Plan for your child, worry about provision in further education or you need to appeal a decision by the local authority, we'll be there to support you. We also have close links with charities and independent schools and colleges who we regularly support with free legal advice clinics throughout the UK.

## Complementary legal expertise

### Medical Negligence

Shoosmiths has one of the UK's leading medical negligence law teams. Our specialist solicitors have extensive experience of handling all types of medical negligence claims including birth and brain injuries.

### Court of Protection

The Court of Protection is the body responsible for ensuring that a person's affairs are managed correctly when they lack the mental capacity to do so. We can call on colleagues experienced in Court of Protection issues, who understand the importance of safeguarding the best interests of individuals of any age who lack capacity, whether that's due to medical negligence, accident and injury or mental illness.

## Contact us

If you would like our help in securing your child's future, please call +44 (0)3700 868 686 to speak to our client support team or email a team member to arrange a meeting at one of our offices or at your home, whichever is most convenient to you.

## Our expert team



### Guv Samra

Senior Associate

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Guv is a solicitor specialising in assisting parents of children and young people with special educational needs (SEN).

Her team secures the provision of services to be funded by local authorities for children and young adults with additional needs by way of EHC plans. Guv assesses EHC plans and advises on their contents to ensure they are fit for purpose. If there are deficiencies within the plans, Guv can assist in challenging local authority decisions by way of mediation or SEND tribunal appeal.

The types of services that Guv can secure for the children and young people she represents include therapies such as physiotherapy, 1:1 teaching assistance and specialist placements. She has regularly secured independent specialist placements worth over £70,000 a year at the local authority's expense by way of SEND appeal and through pre appeal negotiations.

### What clients say about Guv...



Firstly, a huge thank you to Shoosmiths Guv Samra for a successful appeal against our LA who had refused to name or fund a placement at a residential college. I am thrilled for my 21-year-old daughter (who has cerebral palsy), as she will shortly start at the college of her choice – a dream come true for her. It will be funded wholly by the LA. Guv explained to me thoroughly and patiently, the process of the appeal and organised excellent expert witnesses. We had a huge amount of evidence supporting our appeal and an agreement was reached before the tribunal hearing. Guv is meticulous, driven, compassionate and a joy to know. I wholeheartedly recommend her to anyone fighting to raise the quality of life of their young person with SEND.”

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I'm dad to 4yr old with Autism. We applied for a school place for our son via the local council and waited for the council to tell us they had allocated our son to our preferred school or wanted us (parents) to consider another school they saw fit. The council missed their own deadline to notify us of their decision by nearly 2 months. After 20+ calls and the same number of emails without reply, I was getting nowhere. Stressed and unsure of what to do next, a friend told me contact Guv Samra at Shoosmiths. Guv literally took over my chasing with the council and within 72hrs I received an email from the council advising my son had been allocated to our preferred school choice. The hours saved each week chasing the council (and stress associated) means I now have literally hours of my time back and importantly can start planning for the next phase my son's life – primary school.”

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