



## Written Questions and Answers from the Webinar.

Very many thanks to our legal panel, Steve Broach, Alice Irving, Hayley Mason, and Gregg Burrough for taking the additional time to answer questions towards the end that were not answered in the actual session.

QUESTIONS	ANSWERS
Can a College say students with SEND cannot go back until Easter despite the Government position?	<p>Steve Broach:</p> <p>No. The law and policy requirement is that all children and young people can attend from 8 March. But the individual reasons given would need to be considered.</p>
Can specialists come into school to assess at the moment?	<p>Tania Tirraoro:</p> <p>Yes, DfE Guidance says they can - they have been allowed back since last September where reasonably necessary. See our post here:</p> <p><a href="https://www.specialneedsjungle.com/snjs-10-point-grab-go-version-dfe-back-school-guidance-send-learners/#therapies">https://www.specialneedsjungle.com/snjs-10-point-grab-go-version-dfe-back-school-guidance-send-learners/#therapies</a></p>
Is it lawful for a local authority to finalise the amended EHCP by 15th February, and leave placement blank so they can keep consulting?	<p>Steve Broach:</p> <p>If a local authority issues an EHC Plan without a school named in section I, the Plan has not been finalised as the regulations (SEND Regulations 2014) require</p>
Can a College say students with SEND cannot go back until Easter despite the Government position?	<p>Steve Broach:</p> <p>No. The law and policy requirement is that all children and young people can attend from 8 March. But the individual reasons given would need to be considered.</p>

<p>What is the law for peripatetic staff</p> <p>- most of our children aren't receiving visits stated in their EHCPs</p>	<p>Steve Broach:</p> <p>Those children are entitled to the provision in section F of their EHC Plans, unless it is impossible to deliver it</p>
<p>If a child with EHCP isn't coping with the changes at school at the moment, and refusing to go to school, are Education Welfare Officers allowed to mark them as absent (no SAO etc in place) ?</p>	<p>Alice Irving</p> <p>During lockdown, where a parent or carer of a vulnerable child wishes for their child to be absent, schools are expected to authorise the absence - absence should not be penalised.</p> <p>The situation is likely to change from 8 March - in theory, schools should return to a regular approach to marking absences. The best thing to do is to open a conversation with school about the issues of returning to school and anxiety, what the school can do to support and whether they will authorise absences. If they refuse to authorise absences in recognition of the anxiety of returning to school, then you should seek advice. We'll sign-post at the end of this session places you can go for specific advice.</p>
<p>Some young people haven't been allowed into school as they don't understand social distancing in specialist Post16 provision.</p>	<p>Steve Broach</p> <p>For those with EHC Plans, the LA would seem to be in breach of its duty to secure the provision in section 42 of the CFA 2014</p> <p>Tania Tirraoro (You) 08:17 PM</p> <p>We have done a grab and go guide here - <a href="https://www.specialneedsjungle.com/snjs-10-point-grab-go-version-dfe-back-school-guidance-send-learners/">https://www.specialneedsjungle.com/snjs-10-point-grab-go-version-dfe-back-school-guidance-send-learners/</a></p>
<p>If 1:1 isn't specified in an EHCP can school use COVID as a reason to not support a child with 1:1? Can they legally use the class LSA using social distance as a reason?</p>	<p>Steve Broach:</p> <p>In principle, yes</p>

<p>Are special needs colleges included under the umbrella of school when you refer to “school”?</p>	<p>Steve Broach: Yes - post 16 colleges are covered by the Children and Families Act 2014. There are some technical differences, but EHC Plans apply, as does the section 66 best endeavours duty.</p>
<p>Can an LA place children in an Academy trust school if it doesn't want to admit the child or is suggesting COVID currently means it cannot?</p>	<p>Steve Broach: An LA can place a child in any school via an EHC Plan. Only independent schools which are not on the Secretary of State's approved list can refuse.</p>
<p>What if the excuse used by the school that a particular provision is not based within the bubble area that the child accesses in their year group?</p>	<p>Steve Broach: This doesn't work if the child has an EHC Plan</p>
<p>Are special needs colleges included under the umbrella of school when you refer to “school”?</p>	<p>Steve Broach: Yes - post 16 colleges are covered by the Children and Families Act 2014. There are some technical differences, but EHC Plans apply, as does the section 66 best endeavours duty.</p>
<p>Do you need to amend the EHCP so that it says 1-1 teaching assistance with the curriculum in school and whilst at home for example</p>	<p>Steve Broach: That would be helpful - but EHCPs should be read flexibly during the pandemic, particularly as it will take time to amend them all. By 'flexibly', I mean delivering the same provision in a different way (perhaps at home)</p>
<p>Is it lawful for a school to say provision can only be added to an EHCP at an annual review if it's recommended by the provider, rather than asked for by parent</p>	<p>Steve Broach: No</p>

<p>Who do parents send a pre-action protocol (before Judicial Review) letter to in the LA?</p>	<p>Steve Broach:</p> <p>It would be much better for a lawyer to send it for you. However, if you are sending your own letter, I'd suggest it should go to the chief executive and director of children's services, copied to the legal department and the head of SEN.</p>
<p>Can you send a pre-action letter if you have a complaint in with the LGSCO and provision is still not in place?</p>	<p>Alice Irving</p> <p>Yes, you can send a pre-action letter if you have complained to the Ombudsman. If you start a judicial review process, including by sending a pre-action letter, the Ombudsman will pause looking into the complaint while the judicial review continues. If the provision is put in place following a judicial review or pre-action correspondence, then the Ombudsman might then dismiss the complaint. It will depend on the circumstances.</p>
<p>What if the LA of provision being denied and does nothing?</p>	<p>Alice Irving</p> <p>You should seek advice and should consider sending a pre-action letter. Often a legal letter will make the LA sit up and take notice.</p> <p>03453454345 Helpline Legal Aid</p>
<p>CCG saying health staff deployed into vaccination space so unable to fulfil health duties to families with EHCPs 🧑</p>	<p>Alice Irving</p> <p>If it's truly impossible, the Court won't order it when enforcing the legal duties... but how often is it truly impossible? The starting point is that they should be doing it even if it is very hard. You should seek legal advice and consider sending a legal pre-action letter which can sometimes lead CCGs to reconsider their position.</p>
<p>Can Legal aid be used to obtain multiple independent assessments?</p>	<p>Steve Broach:</p> <p>Yes, independent reports can be obtained via legal aid, but the individual solicitor will need to advise</p>

<p>Do you advocate using the LA formal complaints process when writing to the LA to try to get them to deal with the issue of provision in section F not being provided</p>	<p>Hayley Mason</p> <p>No, often the formal complaints process is a lot longer and time consuming than a simple pre-action protocol letter which has a high level of success</p> <p>Alice</p> <p>It will depend on the circumstances and you should seek specific advice. However, in my experience, often an LA will act more quickly if they receive a pre-action legal letter than if they receive a formal complaint.</p>
<p>Is it correct that parents can ask LA to fund private reports during an EHCP annual review? This way the EHCP can be updated specially where reports are three years old?</p>	<p>Steve Broach:</p> <p>Parents can ask, but LAs don't have to say yes. There is no requirement to get new reports each annual review. If you want to get new reports, you may need to request a reassessment instead.</p>
<p>Why is JR the only legal mechanism for resolution of such matters? I find it wholly inadequate. It takes so much time, the LA 'throws a bone' and the JR stops.</p>	<p>Hayley Mason</p> <p>A pre-action protocol letter which often resolves these issues is exactly that, one legal letter to the LA, often they include a response of only 14 days to get your problem resolved quickly.</p> <p>Why is JR the only legal mechanism for resolution of such matters? I find it wholly inadequate. It takes so much time, the LA 'throws a bone' and the JR stops.</p>
<p>Can a school/college/LA rely on CEV status and shielding advice as a basis for refusing to allow a student back to school in person? Can they insist on provision of a GP letter confirming that the CEV child is "safe" to go back to school?</p>	<p>Alice Irving</p> <p>The special school guidance has this to say: The DHSC guidance for the CEV is not compulsory, although pupils, students and parents are strongly advised to follow the guidance in order to help stay safe. However, in some exceptional circumstances it may be that the health risks need to be balanced with the wider impact of the child or young person not attending education and accessing the</p>

	<p>support that would normally be delivered. This might be due to the level of support that they need or their ability to access remote education and additional services such as therapies, as well as the impact on wellbeing for the wider family. In these circumstances you should work with parents and the other organisations to agree the best arrangement for the or young person and their family to ensure that they continue to receive the support they need.</p>
<p>If a provision in section F is worded 'may benefit from', does it render it legally unenforceable?</p>	<p>It is going to depend a bit on context. However, it is likely to be difficult to enforce this.</p>
<p>There is a confusion around the first £6000 needing to be funded by the school what does this really mean?</p>	<p>Steve Broach: EHC Plans are only required where they are necessary to meet the child's special educational needs. If the child's needs can be met for less than £6000, then this suggests that they don't need an EHCP as the provision should be affordable to the school. But this is just a guide, not an absolute rule.</p>
<p>what if a school refuses to make a reasonable adjustment?</p>	<p>Steve Broach: Disability discrimination claims against schools go to the SENDIST (Tribunal)</p>
<p>How can we challenge the age-old problem of professionals such as SALT, EP and OT writing non-specific reports for the LA at Needs assessment stage which get translated to the EHCP?</p>	<p>Hayley Mason You, as a parent can also supply your own evidence to contribute to the EHCN if you are in a position to do so. You can also ask for amendments to the draft EHCP when you receive it before it is finalised.</p>
<p>Should I get legal support for a best interest meeting where the social worker does not agree that</p>	<p>Steve Broach: Yes, I would very much suggest so. Search 'rightsinreality solicitors' for potential options.</p>

<p>my child should live at home, when I want to continue to support him at home?</p>	<p><a href="https://rightsinreality.wordpress.com/2014/09/13/solicitors-with-expertise-in-disability-and-sen-cases">https://rightsinreality.wordpress.com/2014/09/13/solicitors-with-expertise-in-disability-and-sen-cases</a></p>
<p>Could you please tell us the case law that specifies that the L.A. should provide something that is available by other means- i.e., independent therapists?</p>	<p>Steve Broach: It's the North Tyneside case, Court of Appeal, Sedley LJ - provision must be always be delivered, but court won't make 'impossible' orders. Logical consequence is that LAs should make the provision available in the 'next best' way</p>
<p>How do you decide what is "impossible" to provide? The LA might say well even in "normal times" we wouldn't jump in and supply more staff for school to provide the specified 1:1 if they are short staffed, how do you prove that it's not impossible for them to help and they should be doing more to support school staff shortages.</p>	<p>Alice Irving The onus would be on the LA to prove it is impossible. The starting point should be getting legal advice. It is at least worth sending a proper pre-action letter and seeing what the LA say and then taking advice as to what to do for next steps.</p>
<p>Do you recommend that parents have support/ representation at a tribunal hearing if legal aid have conducted the appeal but do not support parent at the hearing? Thank you.</p>	<p>Alice Irving It will depend a lot on the case - how complicated it is, how confident the parent or carer is in speaking to the tribunal. It might be a good idea to have a preliminary discussion with a barrister about the case and see what they say.</p> <p>Hayley Mason It really is parental preference. Parents can represent themselves or you can use private representation (Solicitors/Barristers) if you are using an advocate not legally qualified, please check their credentials before giving them any money as they are not regulated in the same way.</p>

<p>My son's SEN provision are telling us they will do the review and write it up and send it to us, due to COVID, so no collaboration. Is this legal</p>	<p>Alice Irving</p> <p>If this is an annual review for an EHCP, then parents should be consulted and invited to a review meeting</p>
<p>My son's EHCP states 100 units of respite care. How long is it appropriate to wait for a respite placement to be found before he can start accessing these respite units?</p>	<p>Steve Broach:</p> <p>Social care provision in section H1 should (in law) be delivered immediately. The remedy if it isn't is judicial review.</p>
<p>Thank you. What to do when a child with an EHCP is being kept on a part-time timetable (e.g., 3 sessions of one hour week at lunchtime) because that's when the member of staff is available? (No other 1:1 has been found by interview process.)</p>	<p>Alice Irving</p> <p>You should seek specific advice. As discussed earlier, it should be that the LA look at other options for getting provision in place. At the end of the day, the duty to secure provision is on the LA. Do get in touch with someone for advice.</p>
<p>can an SEN school with in-house provision continue to deny access to therapy programs such as access to sensory room and specific access to resources within residential setting when the child goes there too?</p>	<p>Hayley Mason</p> <p>This would really depend on exactly what is stated in Section F of the child's EHCP (i.e., what is stated as provision) - and also why they are refusing as they cannot put the disabled person to a disadvantage.</p>

<p>Who is responsible for accessibility requirements if a mainstream school uses Oak Academy resources for online lesson delivery under EA 2010 or public sector website regulations?</p>	<p>Steve Broach: The school is responsible for making reasonable adjustments</p>
<p>Does law apply to independent schools who sometimes appear to be above the law and follow their own rules regarding attendance, testing etc</p>	<p>Hayley Mason This is quite broad, but if your child has an EHCP regardless of whether they attend an independent school or not, the provision must be back in place and must be delivered. The legal duty is on the LA not the school</p>
<p>Should SEN school have shared risk assessment with families, and also positive interaction plan with families</p>	<p>Alice Irving Yes, they should be consulting and sharing information with you</p>
<p>The panel have kindly answered the following questions that they did not have time to answer during the webinar</p>	
<p>I am widowed and receive a very small bereavement benefit which means I am not eligible to claim income support. I am not classed as unemployed. My child is 13 and receives DLA high-rate care low-rate mobility so I am still on tax credits not UC. Is there a way I can receive legal aid please in either my name or my child's?</p>	<p>Gregg Burrough</p> <p>The Legal Help Scheme considers a person's finances. There is a capital test</p> <ul style="list-style-type: none"> <li>• Capital limit is £8,000</li> <li>• This could include property, savings, and bank accounts</li> </ul> <p>If a client has equity in their property, we then assess the market value of the property. From that we can deduct:</p> <ul style="list-style-type: none"> <li>• Up to £100,000 of any mortgage; and</li> <li>• Up to £100,000 of any equity in the property</li> </ul> <p>[I haven't gone into a detailed calculation on this part, but it would be finding out if the client has more than £8,000 equity in the property with the mortgage and equity disregards].</p>

## Stage 2 - Income

### Stage 2(a) - Passporting benefits

If client is directly or indirectly in receipt of:

- Income Support
- Income Based JSA
- Income related ESA
- Guarantee Credit (Pension); or
- Universal Credit

They are passported through the gross income and disposable income test, but capital must be assessed in all cases.

### Stage 2(b) - Gross Income

If the client is not on a passporting benefit, then we have to complete a full assessment of their means. This includes:

- Wages (before tax and NI).
- Benefits (excluding DLA, PIP, CA, and HB).
- Maintenance; and
- Any other income.

Client's gross income must be below £2,657 per month.

The evidence we require is:

- Wage slips (if employed).
- Evidence of drawings for self-employed clients - this could be drawings payments into their account or working accounts/cash book showing drawings.
- Bank statements for the whole computation period.
- Benefit letters.

### Stage 3 - Disposable Income

To determine a client's disposable income, the LAA allow us to take certain deductions from their gross income. These are:

	<ul style="list-style-type: none"> <li>• Tax and NI (pension contributions are not a valid deduction).</li> <li>• Mortgage or Rent (net of housing benefit).</li> <li>• Dependant's allowance - around £290 per child if applicable :</li> </ul> <p>Employment expenses - £45 per month.</p> <ul style="list-style-type: none"> <li>• Childcare costs due to work or study.</li> <li>• Any maintenance they pay.</li> </ul> <p>After the deductions are taken off, the clients disposable income must be £733 or under.</p> <p>So, there are various ways that the person asking this question could qualify for Legal Help in her name and then if the matter required further work under Legal Aid, you could also consider an application for a Public Funding Certificate potentially in your own name or that of your child, but this is as much as I am able to advise at the moment on the information given.</p>
<p>Is there perhaps a middle road before going to disability discrimination regarding reasonable adjustments? Would it take a long time to get to SENDIST for discrimination?</p>	<p>Gregg Burrough</p> <p>I can consider the second part of this question in that my understanding is that it will take around 12 weeks - 16 weeks from the date of lodging the claim for discrimination, but the Tribunal Judge considering the claim would actively manage the matter and if there is a Permanent Exclusion from the school the matter is heard far quicker.</p>
<p>If young adult turns 18 this year and would be classed as not having mental capacity, would families need a welfare deputyship to be able to appeal EHCP or LA making decision they believe young person does not need to</p>	<p>Gregg:</p> <p>I think Hayley addressed this point the general Q and A after the initial talks, that if the Young Person does not have capacity to appeal to the Tribunal, [as per the information above here] then the family member would be substituted as the Alternative Person in the Tribunal appeal, there is a box</p>

<p>continue with any education past age 19 and go into social? (in reality due to costs not because they get little benefit from continuing).</p>	<p>in the appeal form to tick and you would have explained this within the appeal form.</p> <p>The decision to cease to maintain the EHCP, if I have this right from the information above, is a type of appeal to make to the Tribunal and the LA would need to maintain the contents of the EHCP and provide education to the Young Person pending the outcome of the appeal.</p>
<p>My social worker has told me it is down to me to tell her how I will meet my son's needs and what I need from adult services. I have asked for information on adult services as I don't know what may be available to support my son. Can she give me the services that might be right for my son or is it down to me to research this? Thank you</p>	<p>Alice: This sounds like you need to seek legal advice. I cannot provide a specific answer without full information. In general terms, a parent should be involved in any needs assessment, but it does not sound that is all that is being proposed here. Do speak to someone who can give you proper advice.</p> <p>Gregg: A Community Care solicitor may be able to help with the type of provision available under the Care Act or Chronically Sick and Disabled Persons Act here.</p> <p>Also note social care legal charity CASCAIDR may be able to advise (TT)</p>
<p>Is mediation a useful path or a delay tactic by the LA?</p>	<p>Alice: This depends a lot on the specific circumstances of the case. Sometimes mediation can be very helpful; in other cases, it may cause unnecessary delay. You will need legal advice to know which applies to your particular circumstances.</p> <p>One important consideration is that a judicial review (which is what you will need to bring if you are challenging a failure to secure provision or delays in the EHCP process or maybe a challenge to social care provision etc) can only be brought as a 'last resort.' You might not be able to proceed with the court case if mediation was a reasonable option and you did not use it. That is why it is really important to seek legal advice.</p>

	(Note: you must obtain a mediation certificate before you can lodge an appeal with the SEND tribunal- TT)
What if my young person will not tolerate a COVID test? Is this reason to not attend placement?	<p>Alice:</p> <p>You should open up a discussion with the placement. I don't know what type of placement your young person attends, but this, from government guidance, may help:</p> <p>“We recognise that specialist settings need greater flexibility when delivering testing. There will be a range of children and young people in these settings, and different approaches to testing will be needed. We have given specialist settings flexibility to be able to work with pupils/students and their families to agree the most appropriate way of them participating in twice-weekly testing. Guidance will be available via this link -</p> <p><a href="https://www.gov.uk/government/publications/guidance-for-full-opening-special-schoolsand-other-specialist-settings/mass-asymptomatic-testing-in-specialist-settings">https://www.gov.uk/government/publications/guidance-for-full-opening-special-schoolsand-other-specialist-settings/mass-asymptomatic-testing-in-specialist-settings</a> “</p> <p>Most importantly, testing is not mandatory, and where it has not been possible to conduct a test on a pupil or student, it is crucial that they nonetheless continue to have full access to face-to-face education.</p>
Can a school refuse a child back on-site next week if the child cannot do a Covid test? This is a child with an EHCP placed in an independent school.	See answer above: testing is not mandatory. The government guidance states that where it has not been possible to conduct a test on a pupil or student, it is crucial that they nonetheless continue to have full access to face-to-face education.
My child has just started a new school (recently registered ) . How long should I wait for full provision to be in place. e.g., OT/ SALT therapies.	I would suggest speaking to the school straight away and asking them for timeframes for when provision will be in place. If they won't confirm a timeframe, or if they suggest a delay of weeks, or if they don't stick to that timeframe, then you should speak to a lawyer. They can advise you as to steps you can take to help enforce provision you are entitled to, which might be different depending on whether your child has an EHCP stipulating provision or not.
Can an LA blame a school for being an ACADEMY as the reason they cannot implement my child's	You need legal advice. We can't provide an answer without full information.

<p>EHCP? My child has been excluded from their school since the 4th of January due to them being CEV, however they have an EHCP and I'm a key worker. The LA failed to ensure the school would accept them back?</p>	<p>However, in general terms, the duty to ensure your child has the provision in their EHCP rests on the local authority. A local <u>must</u> ensure the provision is in place. A local authority cannot simply leave it to the school to decide what to do.</p>
<p>If a school is no longer able to meet needs and has not been providing therapy throughout child's time there, is appealing placement in section I the only resolution or can you JR it on the fact the provision is not being provided, and can't be provided separately, as it's to do with peer group cognitive ability, school has become MLD.</p>	<p>You would need to speak to a lawyer about your options. There could be both a potential EHCP appeal on Section I (depending on how soon the next review is) or a potential judicial review claim in relation to failure to secure EHCP provision or education. I cannot give specific advice on your case without all the information; a lot will depend on the specific circumstances.</p>
<p>Is there any legal obligation on the LA if a YP isn't attending college through anxiety due to being isolated and are therefore not receiving any provision from their plan but they are still enrolled at college?</p>	<p>Gregg: If the EHCP outlines specific provision then it may be that the LA will need to deliver the provision through other ways, if the young person is unable to attend the educational setting named in their EHCP. Any person giving advice would need further information in order to advise properly on this point though, as they would need to understand what provision is written into the EHCP (is it deliverable at home or in another space) or could it be delivered through 1:1 or remote learning/therapy, for example.</p>
<p>If an LA SEN school doesn't have a SLT or OT available to do 1:1 therapy weekly/fortnightly should this be provided by other means i.e., using an independent service etc or can it just have to not be done, because they don't have time or one available to do so?</p>	<p>We would need more information to provide advice on this, so you should speak to a lawyer if possible. If the SLT / OT provision is set out in Section F of an EHCP, then there could be a potential legal challenge for a failure to secure provision. If there is no EHCP, then the approach would be different.</p>
<p>If a parent has SEN too and cannot face a tribunal, who can represent their child?</p>	<p>Alice: One option is to instruct a barrister to represent your child. You can do this if you have a solicitor on Legal Help or even if you don't have a solicitor because you don't qualify</p>

	<p>for Legal Help. However, generally you will be charged for the barrister's services.</p> <p>You can also see if any of the charities in the sector can help. For example, consider contacting IPSEA who offer a Tribunal Support Service.</p> <p>Gregg:</p> <p>I didn't give sufficient credit to Public Law Project and especially a barrister named Ollie Persey, who at the time was working in PLP, but he was instrumental for the successful application for Exceptional Case Funding for SEN Tribunal representation under Legal Aid.</p> <p>Without knowing the facts of the matter, if the client was eligible for Legal Help then I think it is arguable an application could be made to the Legal Aid Agency for Exceptional Case Funding for Tribunal representation from a barrister, if the client could not represent themselves. If the LAA does not grant it there is a right of appeal in 14 days, appreciate that person may not be eligible for Legal Help though.</p>
<p>What is the best avenue if the LA refuses to investigate a complaint at stage 2 for not providing the provision in section f and LGO won't take the complaint if they feel that the LA have not yet finished considering the complaint.</p>	<p>Gregg:</p> <p>If the EHCP has specific provision in Section F that is not being delivered, you could seek legal advice on the merits of sending a Judicial Review Pre-Action Protocol letter if your aim is to obtain provision in the EHCP, but this may not be what the person is requesting in these circumstances.</p> <p>Alice:</p> <p>It sounds like you need specific legal advice to help navigate this. It is not possible to give advice without more information.</p>
<p>If my daughter doesn't have 1:1 in place on her return do I have to send her to school? We have been shielding a year.</p>	<p>Alice:</p> <p>It isn't possible to give definitive advice without full information about your daughter's situation. You should probably open a dialogue with the school about attendance and the provision that will be in place. If you cannot reach</p>

	<p>an agreement about next steps, then you will need to seek advice from a lawyer or one of the sector charities.</p>
<p>Should return to education be on a full timetable or a part time timetable acceptable?</p>	<p>Alice:</p> <p>The government guidance says that the starting point is there should be full-time education. However, there might be special considerations which apply to a child or young person with SEND transitioning back into school which might mean a slower return is required. If you want your child to be receiving a full timetable and that is not being offered, then you need to seek advice. It's not possible to give advice without a lot more information about what is going on.</p>
<p>What can you do if you issue a Section 42 breach, and the school produces a document saying that they have provided all in Section F when this is an absolute lie- the LA have stated that they have to believe them as they aren't in the school so they can't do anything!!!</p>	<p>Gregg :</p> <p>This is quite a difficult question to answer. It is unclear from the information if the person has lodged a claim for Judicial Review already, as the question states 'issue for a Section 42 breach',</p> <p>But my understanding and experience is the court will be reticent to become involved with a factual dispute if you have issued a JR claim. If the issue is the school have outlined how it has delivered the provision and you dispute this then the remedy may lie in asking for the information from the respective therapist by way of their clinical notes, but I would strongly advise speaking to a lawyer on this point to consider your options.</p>
<p>I understand that legally a LA can extend an EHCP beyond a young person's 25th birthday, if a young person has missed out on the majority of their provision this last year due to covid, if the LA refuse to extend the EHCP beyond their 25th birthday, is there a legal route to challenge this? Does it make a difference if the young person was attending a college/internship or in receipt of a EOTAS package?</p>	<p>Gregg:</p> <p>I think Steve Broach addressed this at the end of the talk, when he commented about the paragraph in the SEN Code of Practice that in certain circumstances the EHCP can continue to the end of the course which may be after the young person's 25th birthday.</p>
<p>If you move to a different LA, does the current EHCP stand?</p>	<p>Gregg :</p> <p>The local authority you are moving from should have a team or a person within the SEN department that contacts the</p>

<p>When should the receiving LA make contact?</p>	<p>new LA's respective SEN department. Your current LA should send the SEN file to the new LA. There are various rules and regulations about how long the receiving LA has to adopt the EHCP and amend it into its format. The receiving LA has to continue to deliver the provision in the EHCP although it may notify you that it has decided to reassess the child or young person's needs. However, it only has a certain amount of time to notify you that it intends to undertake a reassessment.</p>
<p>Do Coram only support with tribunals still?</p>	<p>Gregg: Coram and Simpson Millar and the other face-to-face providers can provide support under the Legal Help Scheme, a type of Legal Aid. Covered under the Legal Help Scheme is:</p> <ul style="list-style-type: none"> <li>• SEN Tribunal appeals (running the whole appeal from initial drafting of Grounds of Appeal all the way up, but not including the Hearing representation)</li> <li>• Unlawful Exclusions through a challenge to the school (normally a Letter Before Action under the Judicial Review Pre-Action Protocol)</li> <li>• Public Law challenges to Local Authorities for failure to undertake something normally as part of the EHCP process (provision or Annual Review for example, through JR as above)</li> <li>• Disability Discrimination claim appeals to the SENDIST tribunal against a school.</li> </ul> <p>The majority of the work is SEN Tribunals support at the moment for Coram.</p>
<p>Regarding legal aid - Is it the case that even with the passported benefits you have to have under £100k equity in your home?</p>	<p>Gregg: There is a capital test</p> <ul style="list-style-type: none"> <li>• Capital limit is £8,000</li> <li>• This could include property, savings, and bank accounts</li> </ul> <p>If a client has equity in their property, we then assess the market value of the property. From that we can deduct:</p>

	<ul style="list-style-type: none"> <li>• Up to £100,000 of any mortgage; and</li> <li>• Up to £100,000 of any equity in the property</li> </ul> <p>[I haven't gone into a detailed calculation on this part, but it would be finding out if the client has more than £8,000 equity in the property with the mortgage and equity disregards].</p>
<p>How long would the process of legal aid usually take</p>	<p>Gregg:</p> <p>The process of Legal Aid does vary, it depends on how the type of support you are seeking.</p> <p>If it is Legal Help then this will depend on obtaining proof of benefits, bank statement, wage slips etc and how quickly a file can then be opened following the respective law firm establishing that you meet the eligibility checks.</p> <p>If it is Legal Aid, through a Public Funding Certificate for something like Judicial Review, then the application through the online system (CCMS) can be completed quickly and pushed for the LAA to make a decision, but it will depend on you signing and returning forms as well providing all of the documents that the Legal Aid Agency may request.</p> <p>I am sorry there is no hard answer to this.</p>
<p>Aren't most JRs eligible for legal aid as they are brought in the name of the child? Is it right that if your child has their own savings though that they might not? Say a child trust fund.</p>	<p>Gregg :</p> <p>Yes, the application for a Public Funding Certificate can be made in the name of the child or young person. The child or young person would be the applicant for Legal Aid then and it would be his or her means that would be assessed. If a child has a trust fund or a certain amount of savings, then the LAA would need to know the amount in the savings or trust fund and would require evidence of the trust fund and amount.</p> <p>Depending on the amount of savings, the LAA may then require a one-off contribution to fund the Public Funding Certificate or monthly contributions, this would be calculated</p>

	<p>when the Means Assessment is conducted, and you would be required to pay this amount if you wanted to take up the offer of funding.</p> <p>Conversely, depending on the amount of savings, the LAA may establish the applicant is over the threshold for Legal Aid.</p>
<p>Is it an option to address a previous college two years ago as the teachers have had a detrimental impact on mental health with continuous niggles /comments</p> <p>Is there a maximum time to put in a complaint?</p>	<p>Alice Irving:</p> <p>It depends on precisely what you want to do what time limits apply. Normally, for a disability discrimination claim to the Tribunal, that must be brought within six months of the act of discrimination (although sometimes the Tribunal will accept claims made after this if there are good reasons). If you are wanting to make an internal complaint to the college, that will depend on their complaint procedures. You will need to speak to someone who can give you proper advice having looked at all the circumstances.</p>
<p>What is direct access, judicial review etc? I'm lost in the lawyer lingo, sorry!</p>	<p>Alice:</p> <p>A judicial review is a claim in the High Court (rather than the SEND Tribunal). This is a claim you can bring to challenge a decision of a public body or a failure of a public body to do what they are legally required to do. For example, in the SEND context, you might bring a judicial review to challenge the failure of a local authority to secure the provision set out in Section F of a child's EHCP; or to challenge the failure of a local authority to issue a new EHCP quickly enough after an annual review. Judicial review is complicated, and you should always have legal advice if you are considering a challenge of this sort. The first step in judicial review procedure is to send a legal letter to the public body you are challenging setting out your complaint and giving them time to respond. In lots of cases in the SEND context, just sending a legal letter setting out the</p>

complaint in legal terms can be enough to get a local authority to respond.

Direct access is where you instruct a barrister directly. Normally, you would work with a solicitor. Then, if you needed special advice or if you needed someone to speak at a court or hearing, you might also work with a barrister. That means in most cases if you have a legal team, you will have a solicitor and a barrister. They each have different roles to play. In some cases, however, it can be appropriate to just instruct a barrister (without having a solicitor as well). That might be where the procedure of communicating with the SEND Tribunal, for example, is something a parent themselves can manage and they only want help with presenting the case at a hearing. For people who do not qualify for Legal Help to have a solicitor assist when they are going to a SEND Tribunal, direct access can be a cheaper option for them than having both a solicitor and a barrister. It will always depend on the particular case whether it is right to just have a direct access barrister. If you are considering this, any direct access barrister you contact should talk you through your options and the pros and cons. They are not allowed to agree to represent you on a direct access basis if they do not think this is in your best interests because they think you need a solicitor.

To find a Legal Aid solicitor: <https://find-legal-advice.justice.gov.uk/>

- Bailey Wright & Co Solicitors
- Cartwright King
- Coram Children's Legal Centre
- GT Stewart Solicitors
- Irwin Mitchell
- Sinclair's law
- NR Legal Solicitors
- Simpson Millar