



Consultation on EHCP Timescales: Submission from Special Needs Jungle Ltd

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Consultation Question 1:

To what extent do you agree or disagree that, where an LA proposes to amend an EHC plan after a review meeting, it should issue proposed draft amendments to the plan as soon as practicable after that meeting and in any event within eight weeks?

SNJ's Answer to Q1:

1. Strongly Disagree.

2. This plan renders moot the recent High Court ruling (R (L, M, and P) v Devon County Council [2022] EWHC 493 (Admin). We believe this plan by the DfE is yet another example by this Government whereby if you don't like a law because it doesn't suit, then just change it. The law is there for a reason; to ensure a disabled child whose plan needs to be amended because it isn't meeting their needs, gets the right provision in place as soon as possible. This is placing the child at the centre. This plan under consultation, in effect, places the system at the centre at the expense of the child.
3. This plan also flies in the face of the warning from the LGSCO in 2018 that councils mustn't throw out the rulebook in the face of pressure.¹
4. We have already shown [in our research here](#):² that for many children, an annual review is far from a yearly event in the first place. Our writer, Matt Keer, carried out a survey of LAs in 2019 to find out the state of Annual Reviews. Below is an extract from this research:

“Several school leaders told us that they send detailed paperwork to the LA after EHCP annual review meetings, and then hear nothing back. Local authority professionals have told us that they wait months for schools to return EHCP annual review meeting paperwork. Parents have told us that they've been waiting not weeks but YEARS for changes to be made to EHCPs following an annual review.

So what's happening in reality?

1

<https://www.lgo.org.uk/information-centre/news/2018/dec/councils-mustn-t-throw-out-the-rule-book-in-the-face-of-pressure-says-ombudsman>

2

<https://www.specialneedsjungle.com/ehcp-annual-review-our-stats-show-theres-nothing-annual-about-them/>

We asked 149 LAs how many EHCP annual reviews they'd completed in 2018, and how many ARs they'd completed in the first 9 months of 2019. We also asked them what their current annual review caseloads looked like: in particular, how many ARs were behind schedule.

We got responses from 122 LAs – but over half of them couldn't provide useful information on their annual review caseload.

In all, 69 of the 122 LAs told us that they didn't know the answers to these questions. In almost all cases, these LAs had the information – but the only way they could retrieve it was by manually going through EHCPs one-by-one, to find out which Annual Reviews had been completed and which hadn't. And they didn't have the time and resources to do that.

*Many LAs have electronic EHCP casework handling systems – but the systems some of them use simply aren't set up to track the progress of annual reviews. Some told us that they **didn't track ARs because the Department for Education didn't require them to provide data on the AR process.***

We did get answers from 53 LAs – and the data they provided shows that like every other part of the SEND system, the Annual Review process is a postcode lottery.

Three of the 53 LAs that responded appear to have completed all of the EHCP Annual Reviews that they should have completed in 2018.

At the other end of the spectrum, seven of the 53 LAs had completed fewer than 25% of them in 2018. Some had completed just 5% of them – and one LA said that it hadn't completed a single annual review at all in 2018.

Overall, the 53 LAs that knew something about their EHCP Annual Review caseload in 2018 had completed just over half the Annual Reviews that they should have that year – 52%, or 54,500 out of 104,500. The percentage was slightly higher for the first 9 months of 2019, but not much.

From Department for Education data, we estimate that roughly 305,000 statutory plans should have had a review in 2018. We only know that 54,500 got reviewed, and we don't know whether even these were done lawfully. And the data we have is from those LAs who are most on top of their Annual Review processes – most LAs don't know one way or another how they are doing.

The 53 LAs that responded with data told us that as of October 2019, they collectively had 13,665 annual reviews that were more than a year overdue – and 3,427 annual reviews that were over two years overdue. That's from just over a third of all LAs – and these are the ones that are on top of their data and can track their caseload. Things are likely to be worse in the other LAs who can't..."

5. Thus, the problem with LAs not being able to complete ARs in time is not because they don't have enough time to produce a decent updated EHCP; it is far more likely to be because their systems are not working effectively. LAs don't track ARs because they don't have to. That has clearly led to a lackadaisical attitude to carrying them out in the first place: because there are no public reporting requirements, they are simply not a priority. We have published [further research on this here](#)³
6. Furthermore, when SNJ Co-Director, Tania Tirraoro's two young people had their first annual review after their Education, Health and Care Plan (EHCP) was put into place, the actual meeting happened roughly on time in December. However, neither young person received any report decision following the review. Nevertheless, when, seven months later, they both graduated from their FE college, the note to cease the EHCP, appeared bang on time. So it seems that LAs can do things on time when it suits them.

3

<https://www.specialneedsjungle.com/ehcp-annual-reviews-being-unlawfully-delayed-by-too-busy-las/>

7. Another example of this is illustrated by the repeated situation with one of SNJ Co-Director, Renata Blower's children, who has very complex needs. Despite her child's complexity, they have never had an EHCP that is up-to-date. Although Annual Reviews happen each year, the draft from that annual review is routinely only sent a couple of days before the next year's annual review date (so a full year later). Consequently, by the time anyone can review the draft it is a year out of date. This obviously means the school never has an up-to-date statutory plan to implement. This is potentially dangerous when considering the complex nature of the child and their changing medical, educational and physical needs. We have no reason to suspect this is an isolated incident.
8. Therefore, it is highly likely that, once LAs finally get around to carrying out the AR, and they then have **eight** weeks to write an amended plan, the deadline is even further away and the imperative to act is pushed even further down the road.
9. From what we have found out in our research, and from what, anecdotally, parents tell us, we believe that LA staff simply:
 - a. don't know the law, and/or
 - b. have been led to believe the law doesn't apply to them, and/or
 - c. have been led to believe the legal requirement to meet the timescales is not important, and/or
 - d. don't have the staffing levels to pay heed to any of the above.

None of these are acceptable.

10. Point d., above, is not a reason to change the law to suit. After all, you presumably wouldn't ease legal tax payment deadlines because some people can't pay on time. You might give them extra time to pay, in exceptional circumstances (and most parents recognise when extra time is required as an exception and within reason and are amenable). But you wouldn't change the law for everyone because it's a bit hard for some. Let's not forget, this isn't an arbitrary deadline with

no real consequences if broken. When a child has unsuitable provision, every additional day means lost opportunities to reach their potential. Why is the law for disabled children's education seen as less important? Are they somehow less important to society? Would such a change be acceptable if it was for children who didn't have a disability? Would it be acceptable for **your** child?

11. Nevertheless, the current conclusion of staff in SEND departments seems to be: if it is custom and practice to simply ignore a legal deadline, why not just carry on? **This is why the High Court acted to reconfirm this Annual Review deadline. Laws cannot just be ignored because some other people are breaking them.**
12. Changing this rule, as the government proposes, sends the message that updated plans are not important, ergo, neither is ensuring that children get the most appropriate provision to which they are entitled.
13. The Department for Education must stop trying to do local authorities' dirty work. They must work to UPHOLD the law, not bend it because it's easier than making LAs comply.
14. **Funding issues:** It is, of course, true that the increase in the number of EHCPs means an increase in the number of Annual Reviews, which undoubtedly adds pressure on overworked staff who do not have enough colleagues with whom to share the workload. But as with most of the problems within the SEND system, this is a resources issue, NOT a legal issue. It is beholden on local authorities to ensure they have the required number of staff to do the work. If LAs insist that they don't have the staff and cannot afford to hire them, then they need to look closely at their systems to ensure they are operating efficiently - which, according to our research, they are not.
15. LAs do, however, have a valid claim that they simply do not have sufficient government funding to hire the staff needed. While the DfE has put millions into SEND, they have not targeted the funding to ensure systems can run effectively and audited to ensure it is being

spent in the intended way. The problem comes right back to the door of the Department and it is appalling that, instead of EVER admitting its own role in the chaotic SEND system, the DfE is seeking to sweep the evidence (that everyone else can see but the Department itself) under the carpet. It seems that the DfE blames LAs and LAs blame parents. This. Must. Stop. The DfE MUST take responsibility for its failings in historically starving education and local authorities of cash. It's unjust to simply sweep the pieces off the board and start again, stacking the decks differently so the stronger players hold even more cards than the weaker ones, who are then even less able to prevail.

16. Nothing in the current SEND Review proposals will fix this. They will, instead, cost millions of pounds creating new systems, instead of making the current system, with its existing rights, work as it should.
17. The argument that with an eight-week timescale, a better plan can be constructed is ridiculous. Considering the number of plans from EHC Needs Assessments that result in unlawful, inappropriate plans after a 20-week (and usually longer) assessment period, it's clearly not the length of time that's at issue; it's the competence and capacity of the plan writer.

Consultation Questions Two & Three

Q2: When an LA decides to amend an EHC plan after a review meeting, do you agree that the following two-stage procedure is required:

- **issue a notice confirming amendments will be made, the process to make them, and the timescale; and**
- **to issue a notice for the proposed amendments, including copies of any supporting evidence?**

Answer options: Strongly Agree/ Agree/ Neither Agree nor Disagree/ Disagree, Strongly Disagree. If you disagree, say why.

Q3: Do you agree with this proposal to add an extra week to the minimum time an LA should give before an annual review.

Answer options: Strongly Agree, Agree, Neither Agree or Disagree, Disagree, Strongly Disagree

SNJ's Answer to Q2 & Q3:

1. Q2: Disagree
2. Q3: Agree with more time, but more than is being suggested.
3. The reasoning for these answers is below.
4. The law is already clear - any "misinterpretation" on behalf of LAs was clearly explained in the above judgement.
5. There is no need for a two-step process such as outlines in Q2. The process for making amendments can, and should, be clearly and simply explained to the family in writing **when they are first told that a meeting is to take place.**
6. A decision to amend the plan can be agreed **AT THE MEETING**. This is supposed to be a co-productive meeting and includes the LA, the setting and the family. This is where the plan is discussed in detail.
7. The preparation work, looking at what the existing plan says and if it is still relevant should be done ahead of time. This can be sent a month, or even half a term before the anticipated date of the AR, in the form of a brief questionnaire to the family and the setting (and any other potential invitees to the meeting). It can be sent and returned by paper, or as an online form, a text or using any online system in use by the LA, whichever works for the family.
8. This gives everyone concerned enough time to focus their minds, gather paperwork and for the parent and setting to have any informal communications if necessary.

9. The questionnaire should ask if the family/setting:
 - 9.1. Are happy with the continued relevance of the existing plan and why
 - 9.2. Are happy with the capacity of the existing setting to meet the child's needs.
 - 9.3. Think the existing plan needs to be updated or not
 - 9.4. If so, which section of the plan needs to be updated and why.
 - 9.5. If the family or setting (or anyone else being invited) thinks that updated external assessments are required and why.
10. All parties should be provided with all the answers to the questionnaire, so it can be a collaborative process. If there is disagreement at this stage, there can be a pre-meeting phone call to discuss further but the decision must be made in the **best interests of the child/young person concerned**.
11. This pre-meeting work means an LA officer can determine whether it is important for them to attend the meeting, whether a more senior attendee is needed from the LA, or whether an AR can be done simply by the parent and setting (as is often the case) if the EHCP does not require updating.
12. If the LA decides **not** to send anyone to the meeting despite being forewarned that a change may be needed, it must then rely on the opinion of the setting, acting as its proxy, to make the decision, along with the parent, on how the plan needs to be updated. This means there is no delay simply because the LA decided not to participate.
13. If the decision at the meeting is not to update and the parent disagrees, they will know immediately if they need to appeal. No time is wasted waiting for the LA's wheels to grind and behind-the-scenes machinations about costs to happen that the parent and setting are not privy to. This does mean that the LA must delegate to its representative the authority to make an actionable decision. Too often, meeting information is taken back to more senior LA officials

who then decide a plan won't be amended, even though they have never met the child or the parent.

14. This is a much more dynamic and fast-moving process, and it means that the first point in Q2 is unneeded. It trusts those involved with the child to know whether an existing plan is sufficient. It's simple, it's logical and means that fewer indefensible decisions are made as everything is transparent.
15. The second point, informing of amendments again, does not speak to co-production. Amendments should be agreed with the family **AT THE MEETING** because they have been given enough time ahead of the process to communicate with the setting and decide what is needed. It also means they have enough time to seek advice or support so they can fully participate, if needed.
16. If an updated external assessment is needed, this could then already have been carried out, as half a term's notice has been given. In the exceptional event that this isn't possible, because of a lack of availability or another reason, then the meeting date can be adjusted to compensate. There is no point having a meeting for an annual review that has any kind of legal completion timescale if the information needed isn't available **AT THE MEETING**. A half-term's notice gives ample time for a pre-meeting or just a phone call to take place between the setting and family to decide and organise additional assessments if needed.

Consultation Question 4

Do you agree the proposals will have a positive impact on those with particular 'protected characteristics' such as a disability and on children's rights?

SNJ's Answer to Q4:

1. **No, we do not agree.**
2. Firstly, the absence of any DfE-cited evidence does not mean there is no evidence at all. We have presented evidence above that clearly illustrates why timescales are not being met and offers ways as to how they can be improved, without extending the post-meeting deadlines. We would suggest you try these before legislating to delay the provision of disabled children's support.
3. Delaying the deadline will not improve the quality of an EHCP as explained above.
4. Extending the time before the meeting for consideration of what is needed is a good idea **but a single week will have no impact whatsoever.** We have made suggestions above that will make a positive difference

Consultation Question 5

What else does your experience with your child's annual review tell you with regard to these proposals?

SNJ's Answer to Q5:

1. With regard to Q5, for a transfer review, the same applies as above.
2. However, as transition review needs to be held in the autumn term, it would be far better to issue the above questionnaire before the end of the previous summer term, thus giving the family plenty of time to think about next steps and consider whether any additional assessments may be needed, and for the LA to source these.

3. As SENCOs will not be available during the summer holidays, standard paperwork should be issued to the family/young person from the return after the May half-term holiday.
4. The SENCO then has time to speak to the family by mid-June, so they can consider whether any new assessments may be needed and to get them booked in. These could then happen at some stage between July and the first half of the September school term
5. It also means that families have a chance to speak to prospective new settings and get visits booked in before the summer holidays or in the first half of the autumn school term.

While some of these views may be uncomfortable to the Department for Education, we hope that you will find our suggestions for improvements logical, well-considered and workable. Best of all, they do not require primary legislative change, they are low-cost or cost-free, and retain the current legal rights of children and families to timely decisions and action on updating EHCPs at Annual Reviews.

We would, of course, be happy to speak to the team further on these ideas at any time.

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