

#6 Health and Social Care

ASK THE JUDGE



Frequently asked questions for parents and young people

These Frequently Asked Questions have been prepared to provide a summary of the key duties on local authorities following the introduction of the Children and Families Act 2014. They are not to be treated as providing legal advice and should be used as a guide only.

If legal advice is required contact SEN4You directly on 01908 082422 or Advice@SEN4You.co.uk

KEY PROVISIONS

- Sections 23, 25, 26, 28 and 31 of the Children and Families Act 2014
- The Care Act 2014
- Section 2 of the Chronically Sick and Disabled Persons Act 1970
- Schedule 2, Sections 17 and section 47 of the Children Act 1989
- Section 2 of the Children Act 2004
- National Health Service Act 2006 (Part 3, section 75 and 14Z2)
- Local Government and Public Involvement in Health Act 2007
- Equality Act 2010 (including disability equality duty under s149)
- Health and Social Care Act 2012
- Chapter 3 of the SEN and Disability Code of Practice 2014
- The Education (Special Educational Needs and Disability 2014) Regulations

Does the local authority have a duty to provide an integrated education, health and social care service under the Children and Families Act?

Yes. Section 25 of the Children and Families Act 2014 places a duty on local authorities to ensure integration between educational provision and training provision, health and social care provision, where this would promote wellbeing

and improve the quality of provision for disabled young people and those with Special Educational Needs (SEN).

The Care Act 2014 requires local authorities to ensure co-operation between children's and adults' services to promote the integration of care and support with health services, so that young adults are not left without care and support as they make the transition between child and adult social care.

What social care and health services must be commissioned?

Local authorities and Clinical Commissioning Groups (CCGs) must make joint commissioning arrangements for education, health and care provision for children and young people with SEN or disabilities (Section 26 of the Act). While the details of which services should be commissioned in an area should be agreed locally, all local authorities and their partner Clinical Commissioning Groups (CCGs) must make arrangements for agreeing:

- The education, health and social care provision reasonably required by local children and young people with SEN;
- Which education, health and social care provision will be secured and by whom;
- What advice and information is to be provided about education, health and care provision and by whom and to whom it is to be provided;
- How complaints about education, health and social care provision can be made and are dealt with;
- Procedures for ensuring that disputes between local authorities and CCGs are resolved as quickly as possible.

Can the local authority jointly commission any services?

Yes. Joint commissioning arrangements must cover the services for 0-25 year old children and young people with

SEN or disabilities, both with and without EHC Plans.

Services will include specialist support and therapies, such as clinical treatments and delivery of medications, speech and language therapy, assistive technology, personal care (or access to it), Child and Adolescent Mental Health Services (CAMHS) support, occupational therapy, habilitation training, physiotherapy, a range of nursing support, specialist equipment, wheelchairs and continence supplies and also emergency provision.

Joint commissioning must also include arrangements for:

- Securing EHC needs assessments;
- Securing the education, health and care provision specified in EHC Plans;
- Agreeing Personal Budgets.

Local joint commissioning arrangements must consider:

- What advice and information is to be provided about education, health and care provision for those who have SEN or are disabled and by whom it is to be provided;
- How complaints about education, health and social care provision can be made and are dealt with;
- Procedures for ensuring that disagreements between local authorities and CCGs (and NHS England for specialist services) are resolved as quickly as possible.

How do parents and young people know what services have been commissioned in their local authority?

Details on the health and social care services commissioned by the local authority must be presented publicly in the Local Offer.

Does this mean that social care and health have to work with the local authority to deliver an integrated service?

Yes. They must agree how they will work together. They should aim to provide personalised, integrated support that delivers positive outcomes for children and young people, bringing together support across education, health and social care from early childhood through to adult life, and improves planning for transition points such as between early years, school and colleges, between children's and adult social care services, or between paediatric and adult health services.

Is there a key person in the health service that the local authority will be dealing with?

Yes. There should be a Designated Medical Officer (DMO) to support the CCG in meeting its statutory responsibilities for children and young people with SEN and disabilities, primarily by providing a point of contact for local partners, when notifying parents and local authorities about children and young people they believe have, or may have, SEN or a disability, and when seeking advice on SEN or disabilities. This does not alter the CCG's responsibility for commissioning health provision.

The DMO should have an appropriate level of clinical expertise to enable them to exercise these functions effectively, and should be designated as the DMO in their job description.

What role does the DMO have?

The DMO provides the point of contact for local authorities, schools and colleges seeking health advice on children and young people who may have SEN or disabilities, and provides a contact (or contacts) for CCGs or health providers so that appropriate notification can be given to the local authority of children under compulsory school age who they think may have SEN or disabilities.

The DMO would not routinely be involved in assessments or planning for individuals, except in the course of their usual clinical practice, but would be responsible for ensuring that assessment, planning and health support is carried out. Some CCGs may delegate key decisions to the DMO (for example, agreeing the health services in an EHC Plan).

What responsibilities do social care have?

Where a child or young person has been assessed as having social care needs in relation to their SEN or disabilities, social care teams:

- Must secure social care provision under the Chronically Sick and Disabled Persons Act (CSDPA) 1970 which has been assessed as being necessary to support a child or young person's SEN and which is specified in their EHC Plan.
- Should provide early years providers, schools and colleges with a contact for social care advice on children and young people with SEN and disabilities.



- Must undertake reviews of children and young people with EHC Plans where there are social care needs.
- Should make sure that for looked after children and care leavers the arrangements for assessing and meeting their needs across education, health and social care are coordinated effectively within the process of care and pathway planning, in order to avoid duplication and delay, to include in particular liaising with the Virtual School Head (VSH) for looked after children.

What about the transition to adult social care?

Young people with SEN or disabilities turning 18 may become eligible for adult social care services, regardless of whether they have an EHC Plan or whether they have been receiving services from children's social care.

The Care Act 2014 and the associated regulations and guidance set out the requirements on local authorities when young people are approaching, or turn, 18 and are likely to require an assessment for adult care and support. These are intended to support effective transition from children's to adult social care services. For those already receiving support from children's services, the Care Act makes it clear that local authorities must continue to provide children's services until adult provision has started or a decision is made that the young person's needs do not meet the eligibility criteria for adult care and support following an assessment. Children's services must not be discontinued simply because a young person has reached their 18th birthday.

Local authorities must provide information and advice on the range of services available. They should include in their Local Offer relevant information and advice on local provision and how to receive an assessment for transition to adult care and support.

If a parent or young person requests an EHC Needs Assessment, is the local authority required to inform health and social care?

Yes, the local authority must notify:

- The health service (the relevant Clinical Commissioning Group (CCG) or NHS England where it has responsibility for a child or young person);
- Local authority officers responsible for social care for children or young people with SEN.

If the local authority has agreed to carry out an EHC Assessment, are social care and health required to provide advice?

The short answer to this question is yes. Both health and social care are required to provide advice where they are asked for advice for the purposes of an EHC Needs Assessment. However, the law does not dictate the form or type of that advice. It will be for the local authority and its partners to agree what advice is going to be undertaken where an EHC Assessment is being undertaken.

When must that advice be provided by health and social care?

The advice from both health and social care must be provided within six weeks where it is requested as part of an EHC Needs Assessment.

What if the advice is not provided within the permitted timescales?

The local authority would be in breach of the statutory timescales for completing the EHC Assessment. In cases where the statutory deadline is missed, the local authority will need to raise this issue with the relevant Clinical Commissioning Group and the Designated Medical Officer.

What happens if a child or young person fails to attend scheduled appointments?

The Special Educational Needs and Disability Regulations 2014 set out specific exemptions where the time limits can be extended. These include where:

- Appointments with people from whom the local authority has requested information are missed by the child or young person (this only applies to the duty on partners to comply with a request under the EHC needs assessment process within six weeks);
- The child or young person is absent from the area for a period of at least four weeks;
- Exceptional personal circumstances affect the child or his/her parent, or the young person;
- The educational institution is closed for at least four weeks, which may delay the submission of information from the school or other institution (this does not apply to the duty on partners to comply with a request under the EHC needs assessment process within six weeks).

If health and social care provision is included within an EHC Plan are they required to provide support?

No. Whether a child is entitled to receive support from health or social care services depends on whether the child meets the relevant criteria that each service will set for determining eligibility for services.

If health decides to contribute provision to an EHC Plan, what section should it be placed in?

Section C of the EHC Plan should describe the child or young person's health needs which are related to their SEN. The Clinical Commissioning Group (CCG) may also choose to specify other healthcare needs which are not related to the child or young person's SEN (for example, a long-term condition which might need management in a special educational setting).

Section G of the EHC Plan should detail any health provision reasonably required by the learning difficulties or disabilities which result in the child or young person having SEN. Where an Individual Health Care Plan is made for them, that Plan should be included.

Health care provision reasonably required may include specialist support and therapies, such as medical treatments and delivery of medications, occupational therapy and physiotherapy, a range of nursing support, specialist equipment, wheelchairs and continence supplies. It could include highly specialist services needed by only a small number of children which are commissioned centrally by NHS England (for example therapeutic provision for young offenders in the secure estate).

The local authority and CCG may also choose to specify other health care provision reasonably required by the child or young person, which is not linked to their learning difficulties or disabilities, but which should sensibly be co-ordinated with other services in the Plan.

Where the health service is contributing to a personal budget, this would be included with Section J of the EHC Plan.

If social care decides to contribute provision to an EHC Plan, what section should it be placed in?

Section D of the EHC Plan will describe the child or young person's social care needs which are related to their SEN or to a disability. The local authority may also choose to specify other social care needs which are not linked to the child or young person's SEN or to a disability. This could include reference to any child in need or child protection plan which a child may have relating to other family issues such as neglect. Such an approach could help the child and their parents manage the different Plans and bring greater co-ordination of services. Inclusion must only be with the consent of the child and their parents.

Social care provision must be set out in the following sections:

- Section H1: Any social care provision which must be made for a child or young person under 18 resulting from section 2 of the Chronically Sick and Disabled Persons Act 1970.
- Section H2: Any other social care provision reasonably required by the learning difficulties or disabilities which result in the child or young person having SEN. This will include any adult social care provision being provided to meet a young person's eligible needs (through a statutory care and support Plan) under the Care Act 2014.

Where social care is contributing to a personal budget, this would be included within Section J of the EHC Plan.

When is health or social care provision educational or non-educational?

Health or social care provision which educates or trains a child or young person must be treated as special educational provision and included in Section F of the EHC Plan. Where it is included in this section, the responsibility for delivery rests with the local authority.

Decisions about whether health care provision or social care provision should be treated as special educational provision must be made on an individual basis. Speech and language therapy and other therapy provision can be regarded as

either education or health care provision, or both. It could therefore be included in an EHC Plan as either educational or health provision.

Does the health service have to provide agreement for provision to be included in Section G of the EHC Plan?

Yes. The health care provision specified in section G of the EHC Plan must be agreed by the CCG (or where relevant, NHS England) and any health care provision should be agreed in time to be included in the draft EHC Plan sent to the child's parent or to the young person.

Can the health service be made to provide support set out in an EHC Plan?

Yes. If the EHC Plan specifies health care provision in Section G, the responsible commissioning body must arrange the specified health care provision for the child or young person.

However, parents are not able to appeal against the health provision specified in Section G of the EHC Plan. They can only appeal against it if it is included or not included within Section F.

Can a parent/young person appeal to the SEN Tribunal about the health care or social care provision set out in an EHC Plan?

No. However, they will be able to request mediation to attempt to resolve any dispute, which the health service may be required to arrange. This depends on whether there are any other issues in the EHC Plan which are in dispute.

If there are, then the local authority is responsible for arranging the mediation. If not, then the health service must arrange the mediation. In either scenario, the health service must participate in the mediation and send to the mediation session a person with the authority to make decisions about provision.

