

Independent Review of Hertfordshire County Council's Education, Health and Care Needs Assessment Process

Leon Glenister

2 July 2024



Contents

Glossary	4
Executive Summary	7
Introduction	11
Background to this review	12
The information I have considered	12
The approach of the Council	15
References in this report	15
The wider context	16
The improvement journey	17
Making SEND Everyone's Business	17
Ofsted and CQC inspection	19
The SEND Priority Action and Improvement Plan	20
Oversight of the SENDPAIP	21
Building capacity in the service	22
Communication and the Parent Portal	23
Timeframes for determining a request for an EHC Needs Assessment	25
The statutory timeframe	26
The Council's process following a request for an EHCNA	26
The current timescales	27
What happens when the 6 week deadline has passed?	30
Accountability for timescales	31
Decision making in determining whether to carry out an EHC Needs Assessment	33
The legal provisions on determining whether to undertake an EHCNA	34
Relevant statistics	36
The decision maker	36
Concerns around the legal test being applied	38
The legal test the Council is applying when determining whether to assess	42
The process following the appointment SEND Panel Managers	44
Relevance of the graduated approach to the EHCNA test	46
The process when an appeal is made	48
The process when an appeal is conceded	49
An alleged policy of deferring and delaying	50

Reasons following a refusal to carry out an EHCNA	54
The process following a decision on whether an EHCNA is required	56
Timeframes for issuing an EHC Plan following an EHC Needs Assessment	59
The statutory timeframe	60
The Council's performance within the wider context	60
The SENDPAIP	62
The process following a decision to assess	63
Why an EHC Plan may be issued late	64
EP advice	64
SLT advice	69
Social care advice	73
Drafting the EHC Plan	74
Communication	75
What happens at 20 weeks if the plan is not ready?	77
Equality	78
Concluding Remarks	79
APPENDIX 1: TERMS OF REFERENCE	82
Introduction	82
Background	82
Terminology	83
Terms of the IR	84
Timescales	85
Scope	86
APPENDIX 2: COLLATED LIST OF RECOMMENDATIONS	91
Timeframes for determining a request for an EHC Needs Assessment	91
Decision making in determining whether to carry out an EHCNA	91
Timeframes for issuing an EHC Plan following an EHCNA	93
APPENDIX 3: LEON GLENISTER'S CV	95

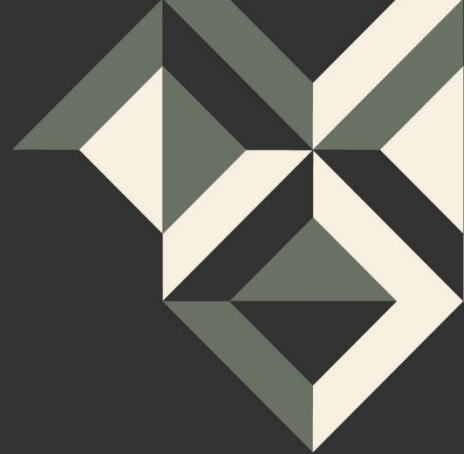
Glossary

Term	Definition
ASK Sali Team	ASK Sali Graduated Response Team. The role of the team includes answering calls on the ASK Sali telephone line; carrying out early support meetings; and liaising with parents and schools after a refusal to assess decision has been made. SENDIAGOs and SISOs sit within this team.
CFA 2014	Children and Families Act 2014. The legislation which sets out the Council's duties in relation to EHCNAs.
Council	Hertfordshire County Council.
CIAO	Child Information and Advice Officer. Their role includes managing the process from when a request for an EHCNA is made, until the decision is made. If an EHCNA is agreed, they will also arrange for professional reports to be provided as part of the assessment process prior to the case being managed by an EHCCo.
CIM	Collaborative Involvement Meeting. A meeting involving parents and multiple experts as part of the EHCNA, through which advice from an EP is given.
CQC	Care Quality Commission
EHCCo	Education, Health and Care Co-ordinator. Their role includes managing the EHCNA process, following a decision to assess.
EHCNA	Education, Health and Care Needs Assessment. An assessment carried out by the Council to determine whether an EHC Plan should be issued for a child.
EHC Plan	Education, Health and Care Plan.
Front Door Team	Front Door and Assessment Team. The team in the Council who manages the process from early identification of SEND needs in school through to an EHCNA.
EP	Educational psychologist or psychology.
DCO	Designated Clinical Officer. Their role includes arranging for health advice to be provided as part of the EHCNA process.
DfE	Department for Education.

FTT	The First-tier Tribunal. This is the body to which appeals against a refusal to assess are made.
HPCI	Herts Parent Carer Involvement. DfE funded local parent carer forum to improve local services for children and young people with SEND.
ICB	Hertfordshire and West Essex Integrated Care Board. The NHS body which commissions health services, including jointly commissioning SLT services with the Council.
ISM	Implementation and Support Meeting. The meeting offered by the Council with a parent and school following a decision not to carry out an EHCNA.
KPI	Key Performance Indicator
LMAG Panel	Local Multi Agency Group Panel. The Panel that meets to discuss requests for an EHCNA, with the Chair making the final decision.
MSEB	Making SEND Everyone's Business. The Council's programme to improve SEND services following the Council investment in July 2023.
PRISM	Pro Active Implementation and Support Meeting. A meeting arranged by the Council to provide early support for parents and schools in relation to pupils where there are concerns arising from SEND.
R&R Team	The Council's Reconciliation and Resolutions Team. This team will, going forward, handle appeals against refusal to assess decisions.
SISO	SEND Implementation Support Officer. Part of the ASK Sali Team who will attend and follow up on ISMs and PRISMs.
SEND	Special Educational Needs and Disability
SENDCo	Special Educational Needs and Disability Co-ordinator, the individual who arranges SEND provision in a school
SEND COP	SEND Code of Practice: 0 to 25 years ¹ . The statutory guidance published by DfE in relation to SEND.

¹ https://assets.publishing.service.gov.uk/media/5a7dcb85ed915d2ac884d995/SEND_Code_of_Practice_January_2015.pdf

SENDIAGO	SEND Information Advice and Guidance Officer. Part of the ASK Sali Team who manages SISOs and answers calls on the ASK Sali telephone line.
SENDIASS	Hertfordshire Special Educational Needs and Disabilities Information, Advice and Support Service. A central government funded programme providing independent support to parents.
SENDPAIP	SEND Priority Action and Improvement Plan. A plan was published by the Council in December 2023 addressing the CQC and Ofsted inspection report.
SLT	Speech and language therapist or therapy
ToR	Terms of Reference
Trust	Hertfordshire Community Trust. This is the service provider of SLT, commissioned jointly by the Council and ICB.



Executive Summary

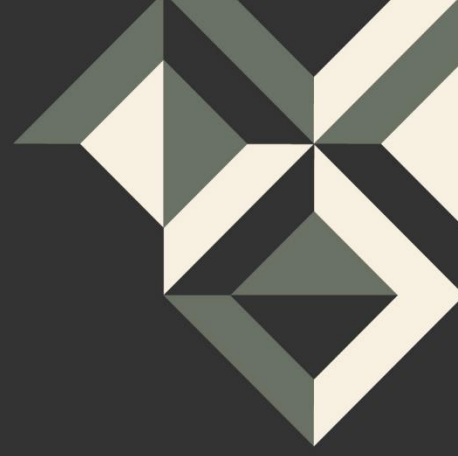


1. Hertfordshire County Council (“the Council”) is on an improvement journey in relation to its special educational needs and disability (“SEND”) services. In its report in November 2023, Ofsted and the Care Quality Commission (“CQC”) concluded there were “widespread and/or systemic failings”, and in particular in relation to the issues which form the subject of this review, those who are undergoing an Education, Health and Care Needs Assessment (“EHCNA”) “too frequently experience significant delays in receiving their final plan”. I received a huge number of accounts demonstrating to me the significant real life impacts of these failings on children, young people and families.
2. The past failings have been recognised by the Council. It has invested around £7 million in improving SEND services, at a time of significant financial pressure across the public sector. This has been invested through a transformation programme known as ‘Making SEND Everyone’s Business’ (“MSEB”). This has included, amongst other things, significant investment in building capacity through a recruitment drive that has led to 111 additional staff being employed, with a current target of 138. Many were trained through a “groundbreaking” programme known as ‘SEND Academy’.
3. This review has occurred at a time where a lot of the necessary infrastructure has now been put in place for improvement, but the results of that investment are only just materialising in real life data. However, from what I have seen through this review relating specifically to the EHCNA process, there is significant cause for optimism. The majority of improvement measures are from the MSEB investment and have only been implemented this academic year, and in this respect the improvement journey has been fairly rapid.
4. This does not mean all the problems have been fixed. The data still shows a sizeable cohort who are still being failed by the systems in place. But the infrastructure is now in a good position to maintain the improvement seen thus far at a good pace. To take two examples, those part of the significant recruitment drive are completing SEND Academy and taking up posts, and the Parent Portal is being soft launched. I am confident the improvements that are starting to be seen in the data will continue. I adopt the view of the Herts Parent Carer Involvement (“HPCI”), who when I spoke to them, on the one hand were very clear about the issues still being seen on the ground, but on the other hand understood that “the ground is laid for it to get better”.

5. I split the points raised by my Terms of Reference (“ToR”) into three areas.
6. First, I looked at historic delays in the Council determining whether it would carry out an EHCNA (section 4). These historic issues were due to the capacity in the system. The Council is now making 97.4% of decisions within the 6 week statutory timeframe. I make recommendations only to ensure communication with parents, particularly where there has been a delay.
7. Second, I looked at how decisions are taken when deciding whether to carry out an EHCNA. There has been significant concern on this due to a number of factors. Data, obtained through a freedom of information request, shows the Council concedes a large number of appeals against refusal to assess decisions. In addition, a lack of communication to parents has led to mistrust. There is a group of parents who consider the Council has applied a deliberate policy to apply too high a threshold in determining whether to carry out an EHCNA to save money that would otherwise be spent on special educational provision.
8. Having researched this particular assertion extremely thoroughly, I have concluded there is no such policy. However, having heard feedback on the decision making process, I have made a number of recommendations to ensure decision makers are fully apprised of the legal test as set out in the legislation, the SEND Code of Practice (“SEND COP”) and case law. I noted the test as set out in training materials and guidance is the statutory test (which is of course ultimately what must be applied) however the case law which notes, for example, it is a “low test” is does not form part of that material. I have also made recommendations to ensure consistency of approach both between different decision makers making EHCNA decisions, and between those decision makers and those considering whether to concede appeals. I have also made a recommendation for specific accountability for the number of decisions being conceded at appeal.
9. Third, I looked at the timeframes for the Council issuing an Education, Health and Care Plan (“EHC Plan”) following an EHCNA. The Council has a duty to issue an EHC Plan as soon as practicable and in any event within 20 weeks of the date of the EHCNA request. Given the consistent rise in EHCNA requests and EHC Plans since the Children and Families Act 2014 (“CFA 2014”) regime came into effect, authorities nationally have

struggled to resource provision which ensures this deadline is met. In 2023, nationally only 50.3% of EHC Plans were issued within the 20 week period and the Council issued 40.2% within the period. In 2024 (to May 2024) the Council issued 54% within 20 weeks. Whilst there has been an improvement, there is still a big gap between current performance and meeting its statutory duty.

10. For the EHC Plan to be issued within 20 weeks, this requires a number of workstreams to function effectively and a blockage in any one will lead to delay. In addition, not all the workstreams are the sole responsibility of the Council. I considered each of them.
11. The Council, for the most part, has used MSEB investment to ensure the infrastructure is in place for the workstreams to function effectively. The speech and language therapy (“SLT”) service has recently cleared a backlog of EHCNA advices, and has recruited, such that the data on timely advices for EHCNAs, although at an early stage, is positive. Social care advice has never really been a cause of delay, although the quality has caused some concern and measures have been put in place to resolve this. And the Council has recruited into the EHC Coordinator (“EHCCo”) team to ensure EHC Plans are drafted in a timely way, as long as the relevant reports are provided in time.
12. The slight exception is the educational psychology (“EP”) service, which partly reflects the very bleak national picture in terms of the sufficiency of qualified EPs. The EP service has taken purposeful measures to address the delays but is at an earlier stage than the other services in terms of seeing consistently better performance. The key date is September 2024 when it will have 5 new EPs recruited into the service, which is the most to start at the same time since 2019. I have made recommendations for developing a strategy to ensure clear focus is given to maximising the number of advices provided on time for EHCNAs.
13. A full list of recommendations is in Appendix 2.



Introduction



Background to this review

14. This Independent Review has been commissioned by Hertfordshire County Council (“the Council”) to consider its process for EHCNAs. The aim, as set out in the ToR (Appendix 1), is to report on the operation and effectiveness of, and potential improvements to, the EHCNA process implemented by the Council.
15. It follows the judicial review claim in *R (W) v Hertfordshire County Council* [2023] EWHC 3138 (Admin), in which the High Court found the Council acted unlawfully in that particular case by not completing issuing an EHC Plan within 20 weeks from the date of request, as required by the CFA 2014. The Claimant had also claimed that the Council was acting unlawfully in a wider systemic way. That wider claim was settled on terms that this Independent Review be carried out in accordance with the ToR.
16. An EHC Plan is a legal document which sets out a child or young person’s special educational needs and the special educational provision reasonably required to meet those needs. The Council is under a legal duty to secure the special educational provision set out in the EHC Plan. The EHC Plan also sets out the child or young person’s social care and health needs and the provision legally required to meet those needs.
17. The precursor to being issued an EHC Plan is an EHCNA. A request for an EHCNA is made to the Council. Where such a request is made, the Council must determine whether the legal test is met for an EHCNA. If it is, then the Council carries out the EHCNA and then must decide whether the statutory test is met for issuing a EHC Plan. When it carries out the EHCNA the Council must comply with timelines set out in legislation. It is this process which comprises the subject matter of this review, and the relevant legal framework is set out in each section below.

The information I have considered

18. I have had the benefit of considering evidence drawn information from a very wide range of sources. I have spoken to a significant number of individuals:
 - a. From the Council, I spoke to a large number of employees:

- i. Director of Inclusion and Skills for Children's Services
 - ii. Interim Head of Integrated Services for Learning
 - iii. County Lead for Graduated Response and Statutory Assessment & Integrated Services for Learning Area Manager North Herts and Stevenage
 - iv. Service Manager for Assessment and Customer Care
 - v. Principal Educational Psychologist
 - vi. Head of Family and Health Services Commissioning
 - vii. Designated Social Care Officer
 - viii. A Council solicitor
 - ix. A Casework Team Manager for Assessment
 - x. Four SEND Implementation and Support Officers ("SISOs")
 - xi. A SEND Information Advice and Guidance Officer ("SENDIAGO") who has to date chaired Local Multi Agency Group Panels ("LMAG Panels")
 - xii. A Team Leader for the Front Door Team who has to date chaired LMAG Panels
 - xiii. Two SEND Panel Managers who will begin chairing LMAG Panels shortly
- b. Dame Christine Lenehan, Chair of the SEND Priority Executive
 - c. Assistant Director for Children's Commissioning at Hertfordshire and West Essex Integrated Care Board ("ICB")
 - d. Children and Young Persons Service Manager at Hertfordshire Community NHS Trust ("the Trust")

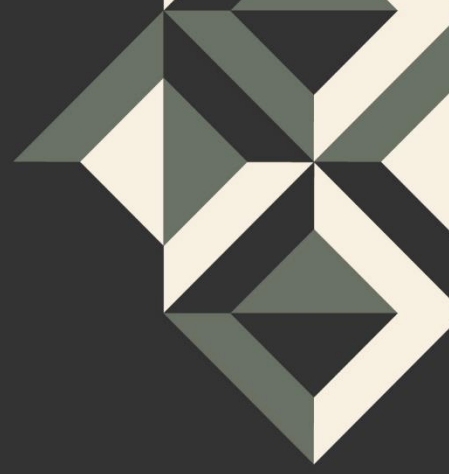
- e. Designated Clinical Officer for Integrated Therapies for SEND at the Trust
 - f. Z, the litigation friend in the *W* case
 - g. Two directors of the Herts Parent Carer Involvement (“HPCI”)
 - h. Co-ordinator of SEND National Crisis Hertfordshire
 - i. A volunteer at SOS!SEN, who attended our meeting with a solicitor who often represents parents in appeals against the Council
 - j. A Special Educational Needs and Disability Co-ordinator (“SENDCo”) at a primary school in Hertfordshire
 - k. A Detective Sergeant who is investigating a criminal complaint based on the EHCNA process at the Council
19. I have been provided with, and considered, a very large amount of documentation which I have found helpful to this review. The Council provided a large batch of documents at the outset, and then responded to various further requests for documents from me. I was also provided helpful documents and links from others who I spoke to.
20. Given the amount of information I have received, in this report I do not go through individual documents and interviews, however I have considered them all. I set out in relation to individual issues particularly pertinent information that I have received.
21. This has included parent surveys which I was referred to: two run by the HPCI, two organised by SEND Crisis Hertfordshire and one organised by Z specifically for this review.
22. I also received a small number of unsolicited emails from parents sharing their own experiences. I have considered those, although the concerns raised were consistent with those raised by parental representatives and the points raised in the surveys.

The approach of the Council

23. In judicial review claims public bodies are under a 'duty of candour' which means they must approach a case openly, providing information which assists their case but also may harm their case. The Council was clear with me that this was the approach they have taken in this review, such that they have provided me with full and unfiltered information on their processes. I found the approach of Council officers throughout this review to be transparent, and they responded to my requests for data or documents promptly and without hesitation.

References in this report

24. Within this report I have generally used the terms "child" and "parent". However these should be read to include a "young person" or "carer" where appropriate.



The wider context



The improvement journey

25. From the outset of my review, the Council has been clear that it is on an “improvement journey”. There were failings recognised before the Ofsted and CQC inspection, and plans for structural change were already in train when the inspection occurred. Dame Christine Lenehan described the Council’s approach prior to the MSEB investment as to “paper over the cracks” when what was required was to “rattle the system”.
26. My ToR ask me to consider the system as it is currently operating. However the history is important when considering the evidence I have received. I have had to be mindful of understanding the timing in respect of concerns, particularly when a significant number of measures have only been implemented in the last 12 months, and the results of some of those measures are yet to be seen (for example new recruits who are still assuming posts).
27. Many of the events described to me in the survey data may well relate to events before the more recent measures were implemented. Therefore, the concerns in the surveys provide a very important starting point to assess the potential efficacy of measures which have now been implemented; but they may not provide a good indication of the efficacy of the measures themselves.

Making SEND Everyone’s Business

28. Over the past few years the Council has restructured its SEND services in order to address various concerns and improve its service delivery, which culminated in the implementation of MSEB. I note here some of the pertinent points which relate specifically to the EHCNA process.
29. In April 2022, the Council’s SEND service was restructured, which included the introduction of a new role of a Child Information and Advice Officer (“CIAO”). The CIAO within the SEND service was specifically to help families during the EHCNA process. This role remains, and will be referred to later in this report.
30. In February 2023, the Council recognised it did not have sufficient capacity to deliver its SEND services consistently for families. Part of the reason was the very significant increased demand for SEND services, which had been accentuated during the COVID

pandemic. SEND leaders conducted a review of services at a strategic level alongside the current trends, including the increasing number of EHCNA requests and EHC Plans. It also considered the level of dissatisfaction explained through complaints and through the annual parent survey conducted by HPCI.

31. A business case was formulated which led to the agreement by the Council at a Cabinet meeting on 10 July 2023 to invest £5 million in SEND services. Some of this investment has been ringfenced for services which are considered within this review. A further £2 million was agreed in December 2023 to further increase capacity.
32. This investment has funded the MSEB programme, aimed at addressing the increasing demand for services as well as parental dissatisfaction. The Council has described the MSEB programme as follows:

“MSEB now has an ongoing £7 million annual investment to deliver improvements across the Council’s statutory SEND duties, and some investment into the of attendance duties and inclusion services.

It aims to improve both Education, Health & Care Plan (EHCP) timeliness and quality by significantly **reducing caseloads** and **improving practice**.

It will **build capacity** and specialist, joined-up support for CYP with SEND by embedding EHCP provision **across multiple service areas** in the Inclusion & Skills Directorate and **recruiting 160+ new staff** - ‘Making SEND Everyone’s Business’.

It will implement a workforce strategy to **improve job satisfaction** to **retain current staff and recruit new**, assisted by a strong **recruitment drive** and a new **Hertfordshire SEND Academy** offering a **high-quality induction** and **ongoing training and support**.”

Ofsted and CQC inspection

33. Between 26 June 2023 and 14 July 2023, Ofsted and the CQC conducted an inspection into SEND provision across education, health and care services at the Council. The report was published on 10 November 2023². The overall outcome was:

“There are widespread and/or systemic failings leading to significant concerns about the experiences and outcomes of children and young people with special educational needs and/or disabilities (SEND), which the local area partnership must address urgently.”

34. Some of the particular criticisms which relate to the issues I am reviewing were:

“Too many parents and carers experience poor communication in relation to education, health and care needs assessments”

“Children and young people who are undergoing an education, health and care needs assessment too frequently experience significant delays in receiving their final plan”

“Leaders’ actions to ensure that the concerns of parents and carers are addressed at an early stage, to reduce the need for issues to escalate, such as the recently introduced Resolution and Reconciliation Team, have not been effective enough. More families are requesting support through SENDIASS. A significant number of complaints that are made to the Local Government Ombudsman are upheld. Families often feel that their issues should have been resolved at an earlier stage through effective communication and a shared understanding of SEND needs. Some parents and carers feel that they are left with no option but to pursue legal routes. The local area partnership’s own data shows that the number of complaints is increasing overall. This includes an increase in the number of complaints that relate to issues of

² <https://files.ofsted.gov.uk/v1/file/50232445>

communication. To address this, leaders have recently secured substantial additional funding to support the delivery of their 'Making SEND Everyone's Business' strategy."

35. The report did however note the Council had identified the challenges, the Council's new governance structures and the involvement from HPCI in developing strategy:

"Area leaders have correctly identified the challenges facing the provision for SEND in Hertfordshire. Leaders' strategy sets out what needs to be done and how they intend to do it."

"There are new governance structures in place. Leaders across the local area partnership intend for these to provide strengthened systems of oversight of services across the partnership and SEND partnership working. When fully established, these should provide the necessary rigour to hold leaders to account."

"The local area partnership works closely with the Hertfordshire Parent Carer Involvement (HPCI, the Hertfordshire parent carer forum) to co-produce, review and develop the local area SEND strategy. The HPCI takes an active role in representing the views and experiences of the families of children and young people with SEND. The HPCI engages widely with voluntary organisations to support their work. The HPCI represents parents and carers at a strategic level and is informing the local area partnership's work to improve the outcomes and experiences of children and young people with SEND across Hertfordshire."

The SEND Priority Action and Improvement Plan

36. The Council published an initial response to the inspection in November 2023. The Council then put together a SEND Priority Action Plan and Improvement Plan ("SENDPAIP"), published in December 2023³. This has been accepted by Ofsted and the CQC.

³ <https://www.hertfordshire.gov.uk/microsites/local-offer/media-library/documents/hertfordshire-priority-action-and-improvement-plan-pdf-995kb.pdf>

37. The second 'Area for Improvement' is that "Leaders across the partnership should act to improve the quality of new and existing EHC plans and ensure that plans meaningfully capture the voice and experience of children and young people with SEND and their families". The actions include allocating EHC Plans across a broader range of teams to improve the quality and timeliness of new and existing EHCPs; an additional £5 million investment in recruitment and training; the development of SEND Academy; and to increase capacity to have smaller caseloads in the statutory SEND service.
38. The impacts of these actions included improving timeliness of new EHC Plans to 60% within 20 weeks from a baseline of 33% in 2022; increasing the satisfaction ratings and compliments; and increasing the number of staff achieving accredited qualifications in statutory SEND work.
39. The Council convened an EHCNA Delivery Group which oversaw improvements in this area of the SENDPAIP. The EHCNA Delivery Group is made up of senior managers, and it meets monthly. One of the objectives of the EHCNA Delivery Group is to improve the process, timeliness and consistency for the health contributions to EHC Plans.
40. The fifth 'Area for Improvement' in the SENDPAIP sets out actions to address parent and carer concerns at an early stage to reduce dissatisfaction and eliminate the need for parents and carers to have to follow formal routes. This included an action to create a communication strategy; and improvement of parent communication, experience and expectations around SEND enquiry handling including EHCPs and waiting times. The impact was to increase satisfaction ratings across relevant surveys.

Oversight of the SENDPAIP

41. The SEND Priority Executive is an independent executive board which oversees progress towards priority actions and improvement areas. It is due to exist for the lifetime of the SENDPAIP or until it can be transitioned into a business-as-usual partnership governance arrangement. It is chaired by Dame Christine Lenehan, who is former Director of the Council for Disabled Children and therefore has extensive experience in this area.

42. The Hertfordshire SEND Partnership and Assurance Board was formed to provide effective governance, leadership and oversight to address the priority action and areas for improvement in the inspection report. It ensures the objectives of the programme are clearly defined and progress, defined by Key Performance Indicators (“KPIs”) and Quality Assurance activities measures, is on track and the desired impact achieved. It is jointly chaired by Directors in Health, Education and Social Care, and includes members of HPCI.

Building capacity in the service

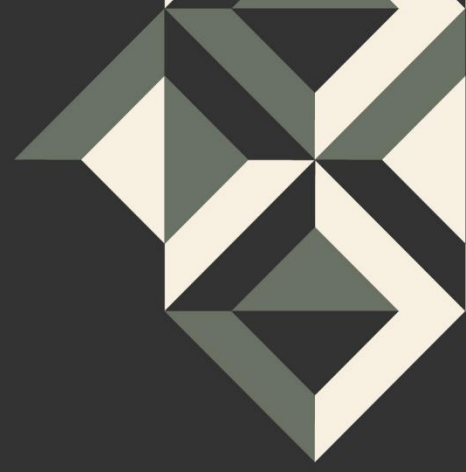
43. The Council recognised that improvement would rely on building capacity within the service. As part of the MSEB workforce strategy, a recruitment event was held in September 2023 in which over 100 people attended. At the time, there were 80 new posts across the service which were to be recruited. A recruitment drive focussed on ‘transferrable skills’ and ‘lived experience’, for example parents, carers and others in the community who had in the past been users or otherwise had contact with SEND services.
44. I consider this approach to have clear advantages. First, such individuals bring with them a base of knowledge and experience which can be developed professionally. Second, such individuals will understand service provision from the perspective of the user. Third, such individuals will often be part of the community which the Council serves, which brings together the Council and community.
45. The Council received over 900 applications. The target of 80 was exceeded in January 2024 and 106 staff have been appointed so far. Following the additional £2 million investment in December 2023 to build further capacity, the current target is for an additional 138 staff.
46. In order to train the new recruits, the Council has run a programme called SEND Academy. This is an intensive induction programme, and was referred to in the SENDPAIP. It was launched on 8 January 2024. As at the end of May 2024, 70 new starters have completed SEND Academy and a further 12 are part way through. It is aligned to the BTEC Level 3 in SEND Casework and BTEC Level 4 in SEND Casework Management accredited by the National Association for Special Educational Needs. These qualifications can therefore be completed following SEND Academy.

47. Dame Christine Lenehan described the SEND Academy as “groundbreaking”, and I agree. She explained that in the context of a national shortage of those working in SEND, growing the Council’s own workforce was a really good idea.
48. SEND Academy was essential for the large scale onboarding of staff in early 2024. It began as a 10 week programme but following feedback, it was reviewed and condensed to 6 weeks. New cohorts are likely to receive it till July 2024 when it will be refined to an ongoing ‘business as usual’ offer for current and new staff. The University of Hertfordshire will carry out an evaluation of SEND Academy training outcomes and processes.
49. As matters stand, not all new recruits have yet taken their posts, but they will do so over the coming weeks following the necessary training. The recruitment impacts to caseloads are already being demonstrated. Across the Front Door and Assessment Team (“Front Door Team”), the pre-MSEB caseload was 150; the ambition from MSEB was 30-40, and as at March 2024 the actual caseload was 50-60.

Communication and the Parent Portal

50. Communication formed the fifth area of improvement within SENDPAIP. Through my review, what was apparent was a breakdown in trust between the Council and some sections of the parent community. This has partly been to service issues as set out in later sections of this report. However, almost as important as those, the lack of capacity has led to failures in communication. The latest HPCI survey highlights poor communication as a particular concern. A simple example relevant to this review, which arose multiple times in my interviews, is that often the statutory deadline for issuing an EHC Plan (20 weeks from request) would often come and go with no EHC Plan but also no communication from the Council.
51. The Council recognises issues with communication, and has put this at the centre of many improvement strategies it is implementing. It is in the process of approving a formal Communication Strategy that encompasses a section on communication by the statutory SEND team.

52. Relatedly, over a number of years, the Council has developed a 'Parent Portal'. I consider this to be a hugely significant development in respect of the issues that are subject to this review. The Parent Portal is an online platform which includes the following:
- a. A dashboard to enable parents to view the details of the key timescales and progression of their child's EHC process.
 - b. Sharing of key information such as the name of the EHCCo, who co-ordinates the EHCNA process.
 - c. A mechanism for gaining parental input into the EHCNA process which automatically feeds into the central case management system.
 - d. The ability to share forms and documentation easily.
53. It has been developed with input from HPCI, and therefore has had input from parental representatives. I have seen screenshots of the portal in development and it appears to be very accessible and user friendly. It has clear indicators if there are forms that the parent needs to fill out; it includes documents that have been uploaded; and it clearly sets out the statutory deadlines.
54. The Parent Portal is due to go live in a phased manner from September 2024. It seems to me that this will address a very significant amount of the concerns which I have heard from the parent community. For example, Z suggested there needed to be a clear case management system which provided transparent information. From what I have seen of the Parent Portal, this is it.



Timeframes for determining a request for an EHC Needs Assessment



The statutory timeframe

55. Where the Council determines that it is not necessary for special educational provision to be made in accordance with an EHC Plan then it must notify the parent as soon as reasonably practicable but in any event within 6 weeks of receiving the request for an EHCNA: regulation 4 of the SEND Regulations 2014.

The Council's process following a request for an EHCNA

56. I am asked what steps the Council takes following an EHCNA request to comply within the statutory 6 week deadline (ToR question 1.1).
57. Since 2022, the process leading to the decision on whether or not to assess has been primarily co-ordinated by a CIAO. I have been provided with the Council's internal guidance document which sets out in some detail the process to be adopted:
- a. On day 1, when a request is received, it is handled initially by a Business Support Officer or Customer Care Assistant. Where the request is from a school, a check is made that the parent has been consulted and there is a consent form; confirmation is sent to parents/school acknowledging a request for an EHCNA; and the correct area is established to allocate a CIAO.
 - b. Within 24 hours of receipt, an e-file is created on the internal system so documents can be added to it.
 - c. Within 48 hours of receipt, the allocated CIAO takes over and there are various steps that they must take notifying relevant people including advice givers. They must also phone parents, and during the call confirm the request has been received and let them know a letter has been sent via Herts FX (the secure email system the Council uses to send documents with). If the parent does not answer the telephone, a message can be left and email sent. After the call, a follow up email is sent to parents containing links for information and advice.
 - d. Within 29 days, replies should be received from parents, the school and other agencies and these are saved to the child's e-file.

- e. Within 6 weeks of the initial request being made, a summary is drawn up of the advice received, and the CIAO prepares the case for the LMAG Panel for the decision.

58. The guidance states in relation to the timing (bold in original):

“Q: What happens if there are delays in making the decisions to assess?”

A: There can be no delay. Decisions **must be made within six weeks** and parents notified within this timescale.”

59. The training material for CIAOs also provides clearly that the timeline for this stage is 6 weeks. The training material also adds the following which I consider of relevance to the issues I am considering:

- a. The CIAO should ask “Are there any reports or evidence missing that the authority are likely to require to make a decision about assessment?”
- b. There is an emphasis on the importance of communication with the parent or carer: “It’s important to be ready to listen and be ready for any questions that may come your way”; “Be ready to explain the process, what happens next, timeline and decision making points”; “Honesty and transparency go a long way - if you don’t know an answer to their question, tell them that you will get back to them. If you tell someone that you will share some information with them, be sure to follow that up and keep them updated.”

The current timescales

60. I have been provided with comprehensive data on the number of requests for assessment which are decided and responded to within the statutory 6 week timeline:

Month	No	Yes	% agreed on time	Total
Ac Year 2021/22				
Sep 21	12	119	90.8%	131

Oct 21	11	102	90.3%	113
Nov 21	19	140	88.1%	159
Dec 21	10	168	94.4%	178
Jan 22	38	208	84.6%	246
Feb 22	21	125	85.6%	146
Mar 22	37	182	83.1%	219
Apr 22	38	201	84.1%	239
May 22	79	166	67.8%	245
Jun 22	34	184	84.4%	218
Jul 22	11	212	95.1%	223
Aug 22	32	284	89.9%	316
Total	342	2091	85.9%	2433
Ac Year 2022/23				
Sep 22	35	145	80.6%	180
22 Nov 22	20	238	92.2%	258
22 Oct 22	12	102	89.5%	114
22 Dec 22	25	196	88.7%	221
Jan 23	21	265	92.7%	286
Feb 23	2	147	98.7%	149
Mar 23	13	222	94.5%	235
Apr 23	15	248	94.3%	263
May 23	16	262	94.2%	278
Jun 23	7	256	97.3%	263
Jul 23	8	247	96.9%	255
Aug 23	10	376	97.4%	386

Total	184	2704	93.6%	2888
Ac Year 2023/24				
Sep 23	8	115	93.5%	123
Oct 23	9	167	94.9%	176
Nov 23	9	236	96.3%	245
Dec 23	5	217	97.7%	222
Jan 23	7	273	97.5%	280
Feb 23	3	155	98.1%	158
Mar 23	0	218	100.0%	218
Apr 24	7	283	97.6%	290
May 24	8	336	97.7%	344
Total	56	2066	97.4%	2122

61. As such, this academic year, 97.4% of decisions on whether to assess have been made within the statutory timeframe; and there has been a year on year improvement since the 2021/22 academic year. The Council consider this improvement is down to capacity. Prior to the MSEB programme, there were 8 CIAO posts in the Front Door Team. Following recruitment, there are 2 new CIAOs within the team, meaning there are a total of 10 CIAO posts within the team. All posts have been filled.
62. It might be said that anything below 100% constitutes a breach of legal duty in particular cases. However, at a systemic level, it is exceedingly unlikely 100% could be achieved. There will inevitably be unavoidable delays in particular cases (for example illness, or a school delaying in responding to information), and I consider 97.4% for this academic year is a very good level.
63. In this light, I consider the Council's decision making on EHCNA requests is, at present, timely. I am asked whether there is any policy or practice that is contributing to delays in making a decision once a request has been made (ToR question 1.6). I do not think there

is. I have not seen any such policy or practice, and more importantly, I do not consider there to be at present systemic delays in making decisions on whether to assess.

What happens when the 6 week deadline has passed?

64. I am asked what internal mechanism the Council uses to flag the statutory 6 week deadline has passed (ToR question 1.2) and what steps are taken if the deadline has passed (ToR question 1.3). The Council compiles data in what is known as a 'weekly child level report'. This includes the total number of open EHCNA requests as against the number of weeks since the request. I have seen an example of this report, which is broken into the four areas of Hertfordshire and the data is broken down into 'week 4 and below', 'week 5' and 'week 6 or over'.
65. This data is seen by Front Door Team Leads, casework managers, service managers and senior managers. This includes the Casework Team Manager for Assessment, Service Manager for Assessment and Customer Care, County Lead for Graduated Response and Statutory Assessment & ISL Area Manager for North Herts and Stevenage, Interim Head of Integrated Services for Learning and shared with the operational Front Door Team Leads. The Council informs me that where there are late decisions, the Team Lead will investigate through a conversation with the relevant CIAO to ensure a decision is made.
66. On an individual basis, it is for the CIAO to be aware of the statutory deadline and any delays, and if there are any delays to notify the parents. The Council response to me was that parents are informed if the six week deadline passes, although from the totality of the information I have received it is clear this has not always occurred in practice. In light of the increased capacity in the last year, it may be communication has improved on this more recently.
67. Even if this type of communication is initially by phone call, there should be a short email which follows. This avoids any later disagreement whether contact was made, or what was said. The email need only be brief to minimise the impact on CIAO capacity.
68. In order to ensure that parents remain informed about the process I consider the CIAO should be responsible for diarising the 6 week deadline and for informing parents if there

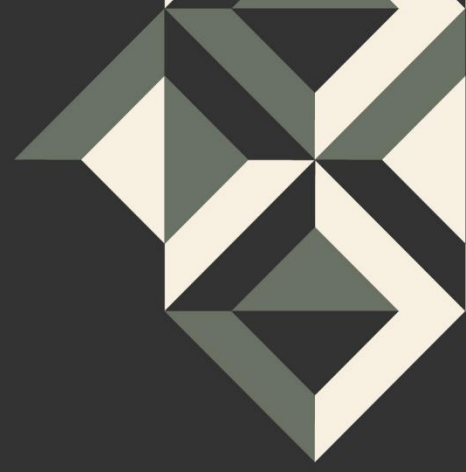
is any delay with reasons for it. In addition, following the weekly child level report, Team Leads should check in individually with CIAOs on cases which have missed the 6 week deadline to discuss steps to ensure the request is determined as soon as possible and to consider (and possibly learn from) the reasons why the deadline has been missed.

- 69. Recommendation 1: Where an EHCNA request is received, the CIAO should diarise the 6 week deadline. If that passes and no decision has been made, they should always contact the parent to explain the reasons for that delay immediately. If this is initially a phone call it should be followed up by a short email.**
- 70. Recommendation 2: Following consideration of the weekly child level report, the relevant Team Lead should discuss each case where the 6 week deadline has been missed with the relevant CIAO.**

Accountability for timescales

71. I am asked about the oversight of the assessment request process to ensure the Council is complying with its statutory obligations, including reporting to councillors and Cabinet members (ToR question 1.5).
72. As explained above, the data is most closely monitored through the weekly child level reports. There are other mechanisms by which the data is monitored as well:
 - a. A smaller set of metrics relating to EHCNA is also reported to the corporate Strategic Management Board as part of Council-wide performance reporting. As part of the SENDPAIP, this information is also reflected in the local area partnership dashboard and since December 2023, monthly updates for the Chief Executive.
 - b. Since December 2022, there is an Inclusion and Skills directorate performance board, which is chaired by the Director of Inclusion and Skills that brings together Heads of Service and key service managers within the directorate to focus on performance and promote cross-service collaboration. This considers data including that relating to the EHCNA process.

- c. Monthly performance reports summarising key EHC Plan performance data as part of Inclusion and Skills directorate performance reporting.
 - d. Also since December 2022, there are quarterly performance updates presented to the Children's Services Core Board and to Education, Libraries and Lifelong Learning Cabinet Panel. I have seen some of the reports for this, and they include relevant data on the EHCNA process (including data on refusals to assess and decisions within the 20 week timescale) such that it is open to challenge by Councillors and Cabinet members.
 - e. Monthly information relating to the numbers of EHC Plans finalised, timeliness, and the numbers of overdue assessments is submitted to the Department for Education ("DfE").
73. On an individual basis, the Front Door Team Leads oversee the data each week and identify any issues. I was informed that if the 6 week rate dropped to 95% that would be a worry. If this occurred, it would be flagged through the data reporting systems.
74. I consider that, particularly since December 2022 where further accountability measures were put in place, there is a robust system of data collection on the EHCNA process and this is provided in a way holds the delivery of the EHCNA process to account.



Decision making in determining whether to carry out an EHC Needs Assessment



The legal provisions on determining whether to undertake an EHCNA

75. Where the Council receives a request for an EHCNA, it must first determine whether it may be necessary for special educational provision to be made for the child in accordance with an EHC Plan. Where it may be necessary, the Council must undertake an assessment where (a) the child has or may have special educational needs and (b) it may be necessary for special educational provision to be made for the child in accordance with an EHC Plan: section 36(3)-(8) of the CFA 2014.

76. Chapter 9 of the SEND Code of Practice (“SEND COP”) provides further guidance in relation to the test. The summary sets out that generally there will have been some assessment by the school prior to an EHCNA:

“9.3. ... The EHC needs assessment should not normally be the first step in the process, rather it should follow on from planning already undertaken with parents and young people in conjunction with an early years provider, school, post-16 institution or other provider. In a very small minority of cases children or young people may demonstrate such significant difficulties that a school or other provider may consider it impossible or inappropriate to carry out its full chosen assessment procedure. For example, where its concerns may have led to a further diagnostic assessment or examination which shows the child or young person to have severe sensory impairment or other impairment which, without immediate specialist intervention beyond the capacity of the school or other provider, would lead to increased learning difficulties.”

77. The criteria for whether to assess are set out in paragraphs 9.14-15:

“9.14 In considering whether an EHC needs assessment is necessary, the local authority should consider whether there is evidence that despite the early years provider, school or post-16 institution having taken relevant and purposeful action to identify, assess and meet the special educational needs of the child or young person, the child or young person has not made expected progress. To inform their decision the local authority will need to take into account a wide range of evidence, and should pay particular attention to:

- evidence of the child or young person’s academic attainment (or developmental milestones in younger children) and rate of progress
- information about the nature, extent and context of the child or young person’s SEN
- evidence of the action already being taken by the early years provider, school or post-16 institution to meet the child or young person’s SEN
- evidence that where progress has been made, it has only been as the result of much additional intervention and support over and above that which is usually provided
- evidence of the child or young person’s physical, emotional and social development and health needs, drawing on relevant evidence from clinicians and other health professionals and what has been done to meet these by other agencies, and
- where a young person is aged over 18, the local authority must consider whether the young person requires additional time, in comparison to the majority of others of the same age who do not have special educational needs, to complete their education or training. Remaining in formal education or training should help young people to achieve education and training outcomes, building on what they have learned before and preparing them for adult life.

9.15 A young person who was well supported through the Local Offer while at school may move to a further education (FE) college where the same range or level of support is not available. An EHC plan may then be needed to ensure that support is provided and co-ordinated effectively in the new environment. It may also be the case that young people acquire SEN through illness or accident, or have an existing condition that requires increasing support as they get older.”

78. The case law also provides guidance on applying the legal test. In **Cambridge County Council v FL-J** [2016] UKUT 225 (AAC), the Upper Tribunal set out the authority should ask two questions: (a) a question of fact, ‘has’ the child a learning difficulty or disability, and (b) a predictive question, is it one that ‘calls for’ special educational provision or for which such provision ‘may be necessary’. It added that the issue was a “provisional and predictive one”. The question is not whether special educational provision *is* necessary, as that is for when deciding whether to issue an EHC Plan, rather the question is whether it may be necessary for special educational provision to be made: **RB v Calderdale**

Metropolitan Borough Council (SEN) [2018] UKUT 390 (AAC). In *W*, which I referred to above, the High Court described this as a “low test”.

79. Where the Council determines not to secure an EHCNA, then the Council must provide reasons for that determination: section 36(5) of the CFA 2014. When the Council notifies the parent of that decision it must also provide further information in relation to appealing the decision, mediation and information and advice about SEND: regulation 5 of the SEND Regulations 2014.

Relevant statistics

80. DfE collect annual data from all authorities in what is known as the ‘SEN2 survey’. This provides some indication of the position of individual authorities in the national picture. Data is also provided comparing authorities to their ‘statistical neighbours’, which are other authorities which the government considers have similar characteristics.
81. Whilst I was carrying out the substance of my review, the latest available data was that from 2022. In that year, the Council received 2695 requests for an EHCNA. It agreed 1981 of these, and therefore agreed 73.5% of requests. This percentage was slightly lower than both its statistical neighbours (76.7%) and nationally in England (78.1%). When this report was in draft, the 2023 data was published. This showed the Council had 2849 requests for an EHCNA in that year, of which 832 were refused. It therefore agreed 70.8% of requests.

The decision maker

82. I am asked about who makes the decision on whether or not to carry out an EHCNA and their training (ToR question 2.1). Decisions are made by the Chair of an LMAG Panel. The LMAG Panel is one of four panels which the Council run, and is solely to consider EHCNA requests. Until recently, an LMAG Panel has met fortnightly in each of the four quadrants of Hertfordshire.
83. The LMAG Panel terms of reference provide that the members will include: a representative of the Educational Psychology service, a representative from the ASK Sali Team, the Designated Health Officer or a health representative, the Social Care Team Lead and SENDCO or representative from mainstream schools.

84. The agenda sets out all decisions to be made at that meeting, split by those agreed prior to the LMAG Panel meeting because the information collated clearly indicates the child's needs meets the test for assessment, and those which are to be discussed by the panel. Each case is presented by the CIAO and the Chair facilitates a discussion on each case on the agenda. The formal decision on whether to carry out an assessment is for the Chair, having considered the discussion.
85. Until recently, the LMAG Panel has been chaired by either a Front Door Manager or a SENDIAGO. However, going forward, they will be chaired by SEND Panel Managers, who have recently been recruited and whose role is solely to chair SEND panels. These SEND Panel Managers have significant experience working in education and statutory SEND services. As part of their induction they observed LMAG Panels and feedback is being used to improve the process.
86. As part of my review, and in light of some of the concerns raised and considered below, I did ask myself whether the LMAG Panel is the correct forum in which decisions on EHCNAs are made. Some concern was expressed to me that the discussion at meetings often depended on personalities in the room, and particular members could be very staunch in their views, which creates a pressured situation for the Chair to make a particular decision. One interviewee suggested the EHCNA decision is not a complex decision and could be carried out by a single officer. Z also suggested an officer could take the decision which could be 'appealed' by a parent to the LMAG Panel, which would increase the parental input into the decision.
87. I discussed this concern with the current Chairs. They acknowledged there could be "passionate" views expressed, but they considered they always had the respect of colleagues. Where there was not full agreement, there would be discussion, and generally viewpoints aligned.
88. I was particularly interested in the views of the SEND Panel Managers, who had observed LMAG Panel meetings and brought a fresh pair of eyes to the process. Each of those I spoke to had worked within SEND departments of other authorities prior to their new role. They spoke of the "rich discussion" at LMAG Panels. They saw the chairs co-ordinating discussion well, and where there was a case that was "on the fence" the Chair re-directing

the panel back to the legal test. They were impressed by the individuals who were present at LMAG Panels.

89. Z suggested parents should be invited to LMAG Panel meetings. This point is dealt with by the legislation which gives the parents a right to express views and submit evidence (section 38(7) CFA 2014), which can be in writing, and in my view that is sufficient. I would be concerned that if parents could attend meetings, this would favour well informed or resourced parents. In addition, the additional time required to permit oral representations would risk increasing the delays which I am asked specifically to address in this report.
90. Taking all of this into account, I take the clear view that the LMAG Panels are a valuable resource for decision making, provided there is guidance and an appropriate procedure in place to ensure optimum decision making. This is what I turn to next.

Concerns around the legal test being applied

91. There was a strength of feeling amongst many I spoke to around how the Council was applying the test on whether to conduct an EHCNA. Some suggested it was applying the “wrong” legal test, or the “wrong” threshold.
92. The most obvious evidence of this was cited in the **W** case. In a freedom of information request which appeared in the evidence to the High Court, there was a table which set out the number of appeals made against refusals to assess, the number conceded by the Council and then how appeals were determined by the First-tier Tribunal (“FTT”). The data in that table set out:

Academic years	Refusal to assess appeals lodged	Council conceded appeal	Appeal determined for the parent	Appeal determined for the Council	Awaiting decision
2020/21	68	48	17	3	0
2021/2022	91	79	11	0	0
2022/23 to date (the letter was	83	43	16	1	23

dated 27 June 2023)					
------------------------------------	--	--	--	--	--

93. This was cited specifically by the High Court. The Judge, David Lock KC, set out:

“I do not know how many requests by parents for assessments were sought by parents and granted without the need for the parents to exercise their right to appeal to the FTT. Equally, I do not know how many parents applied for an assessment and failed to appeal a negative response from the Local Authority. Nonetheless, the above figures strongly suggest that there are serious questions about the way in which the Local Authority carries out its initial decision-making functions given that something approaching 99% of appeals in a recent year were either conceded in advance of a hearing or lost at a hearing. That outcome strongly suggests something has gone seriously awry with the Local Authority's initial decision-making function.”

94. The figures provide some support for the view of the HPCI, who said from the outside it looked like decisions by the LMAG Panel were not taken with a full understanding of the legal framework and then when there is an appeal it goes to an officer who understands the law.

95. Through my review I asked for further data in relation to this issue. I was provided with the following table:

	Academic Year 2022-23	Academic Year 2023-24 to March 2024
Number of EHC requests received (in the period)	2861	1725
Number of refusals to assess (out of total EHC requests received in the period)	901	429

Number of appeals against refusals to assess (out of total refusal to assess decisions)	187	53
Number of decisions reversed prior to an appeal being submitted (this includes those returned to the LMAG Panel with further evidence)	288	64
Number of decisions reversed after an appeal is submitted but prior to a FTT decision (Local Authority conceded appeal)	118	25
Number of decisions upheld by the FTT/successfully appealed	47	1
Number of decisions where appeal is withdrawn or otherwise not pursued	2	0
Number of appeals dismissed	6	0
Number of appeals with a partial decision	0	0
Number of appeals awaiting outcome	14	27

96. It remains the case that a very high number of appeals are conceded without the Tribunal making any decision. Out of 187 appeals made, in 165 the Council conceded or the Tribunal ordered an assessment, which comes to 88%.
97. Unhelpfully, there is no “like” data from other authorities because the national data is not disaggregated in this way. The best that can be obtained by way of comparison are figures provided on how appeals against a refusal to assess are concluded – in the 2022/23

academic year only 29% of appeals were determined by the FTT and it appears that most others were conceded⁴.

98. I therefore sought to interrogate why the Council's concessions were occurring. I asked for details on the concessions which had occurred this academic year, of which there were 25. Of these, 13 show a concession due to additional evidence or information; 10 were conceded because the manager disagreed with the LMAG Panel decision; and 2 were not clear. That means (at least) 40% of those were conceded because the manager disagreed with how the initial decision maker had applied the legal test.
99. Of those 10 which were conceded because of a further decision on the legal test, most record simply it was the manager decision, however some indicate that a view was taken the legal test was wrongly applied by the LMAG Panel. Examples are one which records a manager had looked at the case "and this is not defensible" and another which is recorded as "clearly meets legal test". Each of the 10 are recorded as having been conceded at case review.
100. The data does need to be seen as a whole. This is a point expressly made by the High Court in *W*, which pointed out that it did not have before it the data on the number of requests for an EHCNA which were granted, or the number of refusals which were not appealed. The Council, I think reasonably, points out that the 25 appeals conceded constitute only 1.5% of the total requests made, and only 6% of the total number of refusals to assess. On the other hand, I also note that only 12% of refusals to assess are appealed. Even counting for those which are reversed prior to appeal, the errors in the 25 decisions I have identified may well also appear in many other decisions which were never the subject of an appeal. Therefore, I do consider the number of concession to be sufficiently significant for consideration, and the Council does not suggest otherwise.

⁴ https://assets.publishing.service.gov.uk/media/6579c7ad254aaa0010050c78/Tribunals_SEND_22-23_Tables.ods

The legal test the Council is applying when determining whether to assess

101. I am asked various questions about the criteria the Council applies, and procedure it adopts, in determining whether to carry out an EHCNA and improvements (ToR questions 1.5, 1.7, 1.8, 1.9 ,1.10 and 2.3). In considering these issues, I began by looking at the training materials that relevant officers have including those specific to different roles (including CIAOs, the Front Door Team and the SEND Panel Induction). All of those documents appeared to me to accurately set out the statutory test, and on occasion refer to the relevant paragraphs of the SENDCOP. These do not disclose any basis to conclude the Council is applying the “wrong” legal test.
102. As is implicit in the questions I am asked in the ToR, the nature of the statutory test is, ultimately, a judgment. That means that three different decision makers, faced with the same documentation, may all disagree on whether the legal test is met. Therefore, when considering whether decision makers have gone “wrong”, I have had to consider, at a systemic level, whether they understand the statutory provisions, the SENDCOP and the case law in making a judgment. I also had to be clear they were applying those fairly, which includes (but is not limited to) not applying any unlawful and/or unwritten policy on decisions, which I deal with below.
103. In considering how the test was being applied, I spoke to two individuals who have until now chaired LMAG Panels, and two SEND Panel Managers who will commence chairing panels soon. Each of them was very familiar with the test set out in section 36(8) of the CFA 2014, and could even narrate it. They were also familiar with the relevant paragraphs of the SENDCOP and identified relevant considerations set out at paragraph 9.14. I did not find this surprising as it is contained in all of the Council’s relevant training documentation.
104. However, I did note that those I spoke to were not immediately aware of the case law which has interpreted the test in section 36(8). Whilst case law cannot trump statutory material, I do consider it explains the statutory provisions in a material way. It makes clear the decision is “provisional and predictive” and a “low test”. This may, for example, explain the concession referred to above where the manager stated the case “clearly meets the legal test”.

105. I am asked how LMAG Panels consider 'borderline' cases (ToR question 2.4). I think this is difficult to give any conclusive answer to, because it depends on what is meant by 'borderline'. I am told by the decision makers who have chaired LMAG Panels to date that generally any disagreement is resolved. When specifically asked the question about 'borderline' cases, one decision maker informed me an LMAG Panel would usually err on the side of assessing. The Council has no policy on the matter, and I accept that broadly decision makers generally seek agreement. Therefore, I do not think the particular question I am asked is capable of a definitive answer.
106. On the basis of the documents I have seen and interviews I have carried out, as well as the totality of the data including reference to the number of EHCNA requests made, I do not consider there is a systemic issue on the wrong test being applied by decision makers. I do not consider there is a practice of refusing to assess where requests are supported by clear evidence of needs that merit assessment (ToR question 2.5). However, there remain cases where someone reviewing a decision does consider the test has been wrongly applied, and the number of instances where this occurs must be minimised. Therefore, I turn to consider what improvements can be made to the EHCNA decision making process which would ensure that for every decision, every member of the LMAG Panel as well as the Chair applies the correct test according to the relevant legal provisions, including the case law.
107. In light of the Chairs not immediately having knowledge of the case law which interprets the EHCNA test, I suggest that all induction and training materials for SEND Panel Chairs, as well as attendees for LMAG Panels, should provide an overview of the key cases as set out above. In addition, I consider it is appropriate that a standing document for each LMAG Panel is created setting out the legal test along with the key cases.
- 108. Recommendation 3: The key points from the case law on the EHCNA test are included in all induction and training materials for SEND Panel Chairs as well as attendees for LMAG Panels.**
- 109. Recommendation 4: There should be a concise standing document for each LMAG Panel meeting setting out the legal test, to include the key points from the case law, which should be part of the introductory papers for every panel meeting.**

110. In addition, it is important to ensure that where a decision is conceded, there is a feedback loop to the initial decision maker, which going forward will be the SEND Panel Manager. This will ensure the SEND Panel Manager is aware why the officer in the Reconciliations and Resolutions Team (“R&R Team”), who will going forward consider appeals as explained further below, has disagreed with their view. This will provide learning for future panels. For the same reason, where the FTT has determined an appeal (whether allowing or refusing the appeal), the decision should be provided to the SEND Panel Manager.
- 111. Recommendation 5: Whenever a tribunal appeal is conceded, or otherwise determined by the FTT, the SEND Panel Manager who took the initial decision to refuse to assess should be provided with a note setting out the reasons why the decision was conceded, or a copy of a FTT judgment in the case of an appeal.**

The process following the appointment SEND Panel Managers

112. I consider the appointment of the four specific SEND Panel Managers, whose job is only to chair SEND Panels (that is the range of SEND Panels, not just LMAG Panels), as being a key improvement which should positively impact the decision making on EHCNAs.
113. It will enable much greater expertise in respect of the issues which each Panel hears, as the role is not one which forms part of a wider portfolio of duties; and will ensure the Panel Chairs are sufficiently close, and have adequate time, to develop consistency in decision making. The latter was a point picked up by the HPCI. They saw the decision making process as a bit of a “lottery” due to there being no consistent approach in similar cases.
114. From speaking to the SEND Panel Managers, I have confidence that consistency will be prioritised. They have already started to organise monthly moderation meetings in which the four Panel Chairs will meet to moderate decision making in each quadrant panel.
115. In the new system, FTT appeals will go to the R&R Team. The idea is to provide greater independence when reviewing appeals. I consider it is sensible for a member of the R&R team to attend each of the moderation meetings to ensure that the thresholds being applied by SEND Panel Managers accord with that being applied when decisions are made on

whether to defend or concede an appeal. This applies in respect of refusals to assess, as that is within my ToR, but it may be that this is an idea that is rolled out more broadly.

116. Recommendation 6: A member of the Council's R&R Team attends monthly moderation meetings between the SEND Panel Managers where refusal to assess cases are being discussed.

117. The increase in capacity from the appointment of SEND Panel Managers has also meant the Council has been able to double the regularity of LMAG Panel meetings from every other week to every week. This should mean on the basis of current requests, each LMAG Panel meeting will no longer be considering 30-50 requests but 15-25 instead. A key concern raised by parental representatives to me was the number of cases being heard by LMAG Panels which, it was considered, meant it was inevitable Panel members would struggle to be completely familiar with each case. I tend to agree with that concern. The weekly meetings should address this.

118. I am asked about how the Council ensures oversight of ensuring the correct criteria is being applied in relation to deciding whether to assess (ToR question 1.5). In the monthly performance reports noted above, the overall data relating to appeals is provided. This includes the number of FTT rulings on appeals against a refusal to assess, broken down by whether the appeal was allowed or not. It does not include any reference to the total number of refusal to assess decisions conceded as a percentage of appeals. Whilst I can understand the need to not overburden leaders with excessive data, and that more data does not always mean greater effectiveness, I do think given the particular statistics as commented on in the **W** case in respect of refusal to assess appeals, extra data should be monitored within the monthly performance reports.

119. Recommendation 7: The monthly performance reports should include reference to the number of refusal to assess appeals, those conceded, and (as at present) the numbers determined by the FTT for and against the Council.

Relevance of the graduated approach to the EHCNA test

120. One particular concern that was raised to me was that the Council often states the test is not met as there is a lack of evidence the graduated response has been followed. From the decisions I have seen in this review, it is right to say that this can be a point on which the Council has determined a refusal to assess.

121. The 'graduated approach' to SEN is set out in the SENDCOP⁵. It is defined as follows:

“Graduated approach: A model of action and intervention in early education settings, schools and colleges to help children and young people who have special educational needs. The approach recognises that there is a continuum of special educational needs and that, where necessary, increasing specialist expertise should be brought to bear on the difficulties that a child or young person may be experiencing.”

122. It encompasses four stages: assess, plan, do, review. The SENDCOP provides that this should occur prior to requesting an EHCNA. It states that where “despite the setting having taken relevant and purposeful action to identify, assess and meet the special educational needs of the child, the child has not made expected progress, the setting should consider requesting an Education, Health and Care needs assessment” (paragraphs 5.49 and 6.63).

123. Some concern was raised to me by parental representatives about the Council using the graduated approach as a “go to” to refuse an EHCNA, and that it constitutes a gatekeeping mechanism. Whether all measures that should be delivered by schools without an EHC Plan have been implemented is, according to the SENDCOP, a factor that is likely to be relevant. It is, of course, not the entire test – for example in the case of a child with very complex needs where it is very likely, by nature of those needs, an EHC Plan is required.

⁵ See e.g. paragraphs 5.36-5.49 (early years) and paragraphs 6.44-6.71 (schools)

124. However I have not seen, at a systemic level, any evidence of a policy which suggests the graduated approach is being used as a gatekeeping mechanism. Though, the Council does need to ensure that all guidance and training makes clear that the graduated approach is a relevant consideration, but it may not be a reason on its own to refuse assessment in every case. I raise this because there was one piece of training material which I consider should be framed differently. In the training material for CIAOs, and also reproduced in the Front Door Team materials, it states:

- “• Schools should make reasonable adjustments and adaptations to learning
- If they feel there is a higher need, the class teacher and SENCO should outline what additional provision must be put in place.
- Following at least two cycles, if progress isn't being made, then outside professionals can be requested for additional advice for example, special school outreach, behaviour outreach or SEND Specialist Advisory Service
- We need to give time for strategies to be put in place and if following this, there is still little or slow progress then parents and school can request a needs assessment.
- This then starts the statutory process.”

125. My concern is that this implicitly suggests parents or schools can only request an EHCNA where two cycles of 'assess, plan, do, review' have occurred. That may be lawful as a general rule, but it cannot be a pre-condition.

126. From the documents I saw however, I was not immediately able to see any decisions which had used the graduated approach as an absolute criterion. The random examples I saw did refer to the lack of evidence of other measures, for example no evidence a specific learning difficulties targeted offer having been implemented; there being strategies suggested by professionals that should be implemented; there being no evidence the placement had sought specialist advice; and there being no evidence of the graduated approach being implemented. None of these reasons appeared to be a cover for inappropriate gatekeeping, which was the underlying concern.

127. Recommendation 8: The Council reviews and amends training materials and guidance to ensure that where it states the graduated approach is a relevant consideration, it is clear it is not an absolute criterion or pre-condition.

128. Related to this issue, the issue of school refusers was one which was raised by parental representatives. I understand both from parental representatives and the Council that this is a growing cohort of students. The particular concern that was raised to me was that the graduated approach could not be carried out in relation to such pupils, but there were still refusals to assess on that basis.

129. Within this review I have not carried out a deep dive into this specific cohort. I did raise it with the Council who are clearly aware of the cohort. By way of overview, it considered that it was a large population of students whose needs were diverse and so it was hard to make general points. It considered a lot of these students primarily had health needs, and an EHCNA was not the first stop.

130. This cohort is clearly on the Council's radar and steps are being taken by it. I raise it here as a marker, to the extent that I note there was a strength of feeling on this cohort in the evidence I heard, and leave it to the Council to consider if any suitable action is required. The recommendation made above to ensure the graduated approach is not applied as an absolute criterion in the test for an EHCNA addresses the concern raised to the extent it impacts on the issues within this review.

The process when an appeal is made

131. I am asked about the Council's processes when an appeal is made against a decision to refuse an EHCNA (ToR questions 3.1, 3.2 and 3.3). At present, new appeals are reviewed by casework managers. That manager will review the evidence provided with the original EHCNA request, along with new information presented with the appeal. They will clarify if any additional professionals have had involvement with the child through the ASK Sali Team. The school may also be contacted. That casework manager makes a final decision on whether to proceed and defend the appeal, in which case they will submit a response, or concede the appeal. Going forward, the R&R Team will review appeals to the FTT (I

note previously there was a proposal that SEND Panel Managers would make decisions on appeals, but this is no longer the case).

The process when an appeal is conceded

132. I am asked about the Council's process when an appeal is conceded (ToR question 4.1). Where a decision is taken to concede an appeal it goes back to the LMAG Panel for consideration of what advice is required as part of the EHCNA.
133. I am asked how parents and young people are informed of a conceded appeal (ToR question 4.3). That is through a telephone call in first instance, which will inform the parent or young person of the decision and the reasons for it. Where there is no answer, an email will be sent to arrange another call. The parents or young person will then be sent the standard 'Assessment going ahead' letter.
134. The legal timeline for assessment where an appeal is conceded is not altogether clear. Where the Council notifies the FTT that it will not oppose the appeal before it submits a response, then the Council shall carry out the EHCNA within 4 weeks of the Council's notification: regulation 45(3) of the SEND Regulations 2014. This provision does not, however, explicitly state that the Council must issue an EHC Plan in that time, and it seems unlikely that was intended because of the exceptionally tight timescale - for example, the legislation requires 15 days for parents to be consulted on a draft EHC Plan (regulation 13 of the SEND Regulations 2014) which would be over half of the 4 weeks.
135. If the parties agree that an EHCNA should occur after the Council's response, then the FTT will generally dispose of the appeal by a decision, in which case the Council has 2 weeks to notify the parent it will carry out the EHCNA and (a) where it is decided it is not necessary for special educational provision to be made in accordance with an EHC Plan it shall notify the parent within 10 weeks of the FTT order; or (b) where it is decided it is necessary for special educational provision to be made in accordance with an EHC Plan, it must send the finalised plan to the parent as soon as practicable and in any event within 14 weeks of the date of the FTT order.

136. It does not appear the High Court considered these provisions in the **W** case. It took the view that where there was a concession without any consent order then the original 20 week time limit applied, though it suggested the pragmatic solution was to agree a consent order with a time limit.
137. In any event, the Council does as a matter of fact prioritise cases where there has been a conceded appeal. Such cases are directly overseen by the Team Lead. This in my view is good practice, as this makes up for any delay incurred from the refusal to assess decision and subsequent appeal. I understand the Council will set itself a timeline of 14 weeks to issue an EHC Plan, if it is determined that the child requires special educational provision to be provided in accordance with an EHC Plan. The ToR ask me to compare this approach to that of other authorities if this information is readily available. However, I have not received any information relating to other authorities on this point, and I have not been able to readily locate such information.
138. In my view, in order to ensure both the parent and Council have the same approach, a timeframe should be agreed with a parent where an appeal is conceded, and there should be an expectation that if an EHC Plan is to be issued then that should not be more than 14 weeks from the date of concession.
- 139. Recommendation 9: Where an appeal against a refusal to assess is conceded, a timeline should be agreed with the parent, and if an EHC Plan is to be issued then that should not be more than 14 weeks from the date of concession.**

An alleged policy of deferring and delaying

140. I am asked to consider whether the Council has any practice or policy (written or unwritten) of deterring or discouraging EHCNA requests by imposing immaterial or irrelevant eligibility criteria or through other means (ToR question 1.11). When I spoke to parental representatives the concern was broader than just relating to discouraging requests. There was a concern that there was a deliberate or “wilful” policy or practice to (a) deter parents from applying for an EHCNA, (b) refuse EHCNAs by applying a heightened threshold, and

(c) delay EHCNAs. The motivation for the policy is said to be “managing demand” to save resource otherwise spent on special educational provision.

141. This is a serious allegation and I have investigated it with commensurate seriousness. I spoke to a number of parental representatives and asked probing questions to senior leaders at the Council, SISOs (who communicate to parents before and after the EHCNA process), the existing EHCNA decision makers and the SEND Panel Managers. I have also reviewed all documentation provided to me in detail to understand the various procedures and thresholds being applied, as well as all the training materials for relevant officers.
142. Z carried out a survey for submission to me, which deals with this point. This demonstrates some support for his view. For example, 54% of respondees (there were 191 responses in total) considered the Council had provided them with false information. However, I note in a Facebook group which advertised the survey, the post (not by Z) began “Anyone had difficulty and or refused an EHCNA”, and therefore this specifically targets those who have had difficulties.
143. In light of a detailed consideration of the issue, my conclusion is that there is no deliberate policy in any of the respects set out above. Not only could I find no evidence of any such policy, the idea of such a policy appeared to create some confusion amongst those who I spoke to, and especially the decision makers and SISOs who had probably not heard the allegations before. The SISOs in particular were visibly affronted by the idea they were doing anything which was not in the best interests of the child. I did directly ask every person I spoke to, to whom the question may be relevant, whether they knew of any policy to manage demand through deterring, refusing or delaying, and every person was absolutely clear there was no such policy.
144. I did however want to understand how these concerns have come about. As far as I could tell, they have festered for a number of years. During this time, as noted above, there were recognised failings by the Council in complying with its statutory duties on EHCNAs. Meanwhile, as recognised by all sides, there was often a significant lack of communication between the Council and affected parents. This has led to a breakdown of trust. Through

the purposeful measures the Council is now taking, encompassing an emphasis on communication, it is seeking to rebuild trust, but that will inevitably take time.

145. I consider it important to pick up one manifestation of how the concerns have arisen. Parental representatives reported, and it is reflected in the surveys, that parents were often told things like “there isn’t enough evidence”, “your child is too young”, “wait for a diagnosis” and “you won’t get a special school place so don’t hurry”. There were many examples of this type of comment flagged in the survey carried out by Z. It was often hard to understand who is specifically alleged to have said these statements, and often it is unclear whether it was for example a SENDCo rather than any Council employee. It is not within the scope of this review to consider individual instances, but to look at trends.
146. If this type of comment was said by a Council employee it would have been by a SISO prior to a request for an EHCNA being made. One of the roles of the SISO is to visit schools where any issue has arisen around a child’s SEND, and to assist parents and schools navigate what provision could be put in place. A meeting generally takes place and is known as a Pro Active Implementation and Support Meeting (“PRISM”).
147. This is the only time it seemed to me any deterring could take place, which is why I specifically asked to speak to SISOs who attend PRISMs, and I spoke with four of them. I was very impressed with those I spoke to, all of whom were proud of their job which they saw as assisting children get the educational support they needed. The idea that they would be deterring anyone from exercising a legal right was something they were horrified at. The SISOs had a sense that parents were generally happy with PRISMs and thought they empowered parents.
148. When I asked the SISOs about whether following a PRISM parents would ever not know about their right to request an EHCNA, the initial reaction was that it “probably does come up every meeting”. They said it would depend on the individual case, and often the PRISM occurs at a very early stage. I do not think the possibility of an EHCNA was proactively raised at every meeting, however I also accept to an extent the relevance will depend on the individual circumstances.

149. There exists an inevitable tension between the work of any graduated response team, which seeks to ensure children are appropriately supported by their school, and obtaining an EHC Plan. There is nothing wrong in principle in the Council generally seeking schools provide appropriate provision within their resources before an EHC Plan is sought. That is what the SENDCOP provides for. If properly implemented, the work of the ASK Sali Team should mean requests are fully evidenced and therefore the number of agreed requests for an EHCNA will increase.
150. However, this is likely to have contributed to comments which are perceived as deterring parents from requesting an EHCNA. To be clear, I do not think there is any deliberate or malicious intent in any comments at a systemic level; however, I can understand from a parental perspective how that perception could have come about.
151. It seems to me the key is to ensure the Council is at all times wholly transparent in relation to potential options for parents. This includes their right to request an EHCNA, if they so choose. At present, the following I think is of relevance:
- a. The Council's Local Offer has an entire section headed 'Requesting an assessment'. It offers advice on the process, evidence helpful for decision makers and how a decision is made.
 - b. The Council publishes a SEND Toolkit, which is put together by a group of parents and professionals working with Herts for Learning SEND Advisors. This gives guidance on the relevant SEND frameworks.
 - c. The Council publishes a document 'An 'at a glance' guide to the EHC Needs Assessment Process'. This provides the various stages when an EHCNA request has been made.
 - d. At an Implementation and Support Meeting ("ISM"), the meeting following a refusal to assess, the SISO provides a leaflet to parents for Hertfordshire Special Educational Needs and Disabilities Information, Advice and Support Service ("SENDIASS").

e. The Council holds various training events for schools, which will assist with schools providing correct information.

152. Information for parents on options is available, and particularly through the Local Offer. However, given its complexity, I can understand why parents may become overwhelmed in trying to understand the framework for support for children with SEND and may not always know where to look for information. The most recent HPCI survey highlighted that many families continue to struggle to find information and support.

153. In this light, I consider it may be helpful for the Council to put together a very accessible document setting out the various ways in which a child can be supported. This can cover the graduated approach, as well as requests for EHCNAs and EHC Plans including the tests applied and timescales. In order to be accessible, it may be appropriate to have short introductions, along with links – both to relevant parts of the Local Offer and other guidance; but also to groups who support parents such as SENDIASS. This leaflet can be readily available on the Council website, and handed out to parents when they meet Council officers, including SISOs. It ensures complete transparency on the system and the rights parents have, and provides a reference point for them. In addition, this will address the point raised by the most recent HPCI survey highlighting that many families continue to struggle to find information and support.

154. Recommendation 10: The Council should publish an accessible document setting out an introduction to SEN provision, to include the graduated approach, requests for an EHCNA (and test applied) and timelines for an EHC Plan. This should be concise and may be an introduction with relevant links to further information. It should also include links to other sources of assistance for parents such as SENDIASS. This should be readily available on the Council website and be handed out to parents when they meet Council officers to discuss SEND provision.

Reasons following a refusal to carry out an EHCNA

155. I am asked about the letter which is sent to parents where a refusal to assess decision has been taken (ToR question 2.2). Where a refusal to assess decision is made, the Council

has a standard template letter which is then tailored to the individual case. The SISO who attends the meeting completes and signs the letter.

156. This template letter is the one that was used in the **W** case (see paragraph 7 of the judgment). The Court commented on the letter as follows:

“I have set out that letter in this way because, as written, there is a strong case that it does not wholly make sense. It looks as if the Local Authority have a standard letter rejecting such an application and the person completing the letter is supposed to fill in the relevant details. Although the Local Authority list a number of documents that are supposed to have been considered as part of this decision-making process, the letter does not directly address the statutory test as to whether W "may" have special educational needs. The fact that some of her needs may be met in the ways suggested in the letter does not necessarily mean that she does not have special educational needs. Hence, a fair criticism of the letter was that it suggested that the Local Authority had failed to ask itself the question it was required to address under section 36. There are no documents disclosed by the Local Authority which explain who reached the decision that W did not meet the low threshold under the statutory scheme or why that decision was taken.”

157. I acknowledge the Council's point that whilst the letter is a legal document sent pursuant to a statutory provision, it is also a communication to a parent in relation to their child. I do not think there is any problem with the Council having a template letter; in fact quite the opposite, a framework letter can save time and should provide some consistency in the level of detail in the reasoning in individual letters. However, ultimately I agree with the Judge's conclusions on the current template letter.

158. I have been provided with other (anonymised) sample letters. The section which includes the reasons for the decision varied in detail considerably. The most detailed letter had some grammatical errors – and whilst this may seem minor, in the context of the significance of the decision for a child, I think the standard should be set higher.

159. The legal test is not set out anywhere on the template letter, although in some of the sample letters there is reference to it having been added into the reasons section. Where it is not

set out, this means a parent does not know what test was being applied (leading to the Judge noting it is not clear the correct test was even applied); but the fact it is not set out leads to the reasons section, which is the most important part, not necessarily addressing the legal test. The wording that “there is a more suitable pathway” is not the legal test and leads to a lack of clarity in the reasoning. I therefore consider that the template letter needs reviewing and rewriting.

160. Recommendation 11: In relation to the communication of reasons of a refusal to assess:

- a. The template decision letter where there is a refusal to assess should be reviewed and rewritten. It should include reference to the legal test that the decision maker applied to be transparent. The term “more suitable pathway” should be removed.**
- b. The Council should issue guidance to SISOs on the level of detail in the reasons given, which should directly address the legal test.**
- c. Once a decision has been made at the LMAG Panel meeting, the Chair should check specifically with the SISO that they understand the reasons why it was considered the legal test is not met to ensure these can be properly communicated in the decision letter.**

The process following a decision on whether an EHCNA is required

161. Where a decision is made to carry out an EHCNA, the Council then undertakes the EHCNA and that process is covered below. Where a decision is made that an assessment is not required, then the case is passed to a SISO, who is part of the ASK Sali Team.
162. The SISO first contacts the parent/carer to discuss the decision letter. The training for SISOs explains in that call, they should “Ensure we have been transparent as a Local Authority as to potential next steps”; and offer an ISM to be attended by the SISO, school, family and all stakeholders.

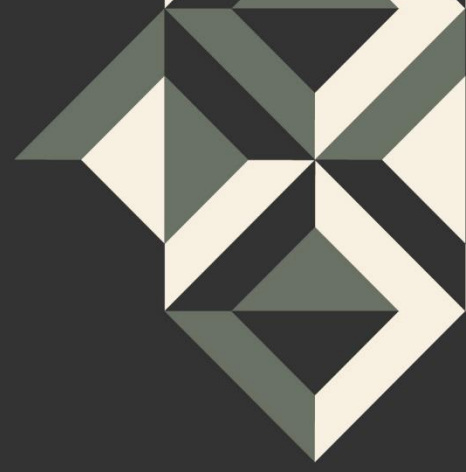
163. The training explains in more detail what an ISM should look like. The SISO has conversations with the parent and school before the meeting; at the meeting there will be a discussion to unpick the case; with the final step being a collation of a list of actions moving forwards and sent to all stakeholders. It may be the case that the SISO remains involved in the case, with a note in their diary to speak to everyone the following term for instance. The material states the “SISO will not close the case until it is ready”.
164. The ISM also provides the opportunity for parents and schools to provide further information which may support the Council re-considering the decision. In this case the SISO would recommend the decision is taken back to LMAG. I understand that 21.9% of requests initially turned down were re-submitted or re-considered with additional information following an ISM, and resulted in the Council changing its decision and carrying out an EHCNA. This figure includes only reconsideration after an ISM, and does not include appeal concessions.
165. I was initially concerned about two related points. The first was the circumstance where a school may disagree with the refusal to assess. This could particularly arise where a refusal to assess is based on a lack of evidence of the graduated approach being implemented, and the school may take the view it has exhausted its own internal resources, particularly as there is a fine line between inclusive teaching and when an EHC Plan is needed. In that event, the school has no recourse because only a parent has an appeal right against a refusal to assess. I did speak to one SENDCo, who considered she had a good sense of when the statutory test was met. Of the refusals to assess in relation to children in her school, she generally agreed with them; however there were two instances where she disagreed with the LMAG Panel decision and she resolved these directly with the Council.
166. Whilst a very small sample size, it is evidence that the Council does engage with school concerns. It seems to me, therefore, that the ISM is sufficient to meet my concern. However, the SISO who attends must be receptive to listening to any concerns of the school in that meeting.
167. The second concern I had was the risk that a plan is put in place and not reviewed. This concern is allayed by the guidance for SISOs which states they “will not close the case until it is ready”. The Council informed me that at there will often be a 3 month check in

following an ISM. I consider it is important that consideration is given to check ins. They may not be necessary in every case, particularly where the school is able to monitor progress following the ISM. Alternatively, it may not be the SISO who is most appropriate to check in, for example it may be better for the Special Advisory Teacher team to do so. Nevertheless, a check in should be considered.

168. Recommendation 12: The guidance and training for SISOs in relation to ISMs should make clear that at every ISM:

- a. The school is provided with an opportunity to feed back any concerns about the refusal to assess decision and these are considered.**

- b. Consideration is given to whether a check in is required with the parent and/or school in relation to the child's progress, and if so, when that should take place. If such a check in is agreed to be by the SISO, it should be diarised by the SISO.**



Timeframes for issuing an EHC Plan following an EHC Needs Assessment



The statutory timeframe

169. Where the Council proposes to issue an EHC Plan for the child, it must send the finalised EHC Plan to the parent and others as soon as practicable and in any event within 20 weeks of the Council receiving the request for an EHCNA, subject only to limited exceptions: regulation 13 of the SEND Regulations 2014.
170. The legislation sets out advice that the Council must seek as part of an EHCNA: regulation 6(1)-(2) of the SEND Regulations 2014. This includes (a) advice from the parent, (b) advice from the school, (c) medical advice from a health care professional, (d) EP advice, (e) social care advice, (f) any other advice the local authority considers appropriate or which the parent reasonably requests.

The Council's performance within the wider context

171. There has been a national trend of an increase in EHCNA requests. Apart from a decrease in 2020 (an atypical year due to the COVID-19 pandemic), requests nationally have increased year on year since EHC Plans were introduced. This is reflected in Hertfordshire. In 2022 there was a 24.5% increase in EHCNA requests; and in 2023 there was a 20.8% increase. This is a higher rate of increase compared with pre-pandemic levels, although slowed from the 28.8% increase between 2020 and 2021. It is therefore unsurprising, both at a national and county level, that there have been capacity issues in the SEND system.
172. I am asked what percentage of EHCNAs go over statutory time frames and what the current trends are more widely (ToR question 5.1). In 2022, 32.6% of EHC Plans were issued by the Council within 20 weeks from the request, which was a reduction from 78% in 2021 (that figure being due to the lower number of requests during the COVID-19 pandemic). In 2022, nationally 50.7% of EHC Plans were issued within 20 weeks, which was a reduction from 59.9% in 2021. The average rate for the Council's statistical neighbours in 2022 was 38.6% and therefore below the national average. There was, though, a huge variation in the Council's statistical neighbours, with Oxfordshire County Council as low as 4% of EHC Plans being issued in 20 weeks to Buckinghamshire County Council issuing 67.1% within 20 weeks. National performance since the EHC Plan regime was introduced has typically been around 60%.

173. In the recently published 2023 data, the Council issued 40.2% of its EHC Plans within 20 weeks from the request. Nationally, 50.3% of EHC Plans were issued in 20 weeks. From the figures the Council provided me, there was a clear improvement at the end of the year. In November 2023, the rate was 55.4% and in December 2023 it was 70.4%. However, at a meeting of the EHCNA Delivery Group in February 2024, it noted there was a greater demand which meant reaching the 60% target would be harder to achieve and this was recorded as a risk.
174. It is hard to tell whether this is currently being borne out. In January 2024 there was a high of 78% of EHC Plans being issued within 20 weeks, but a drop to 58% in February 2024, then 32% in March 2024 and 73% in April 2024. However, the dip can be explained because this records the percentage of EHC Plans issued over 20 weeks from the request. The numbers in February and March 2024 are due to a very large backlog being cleared, where it is inevitable the recorded percentage will be lower. This explanation is supported by the fact that in January 2024 there were 441 outstanding EHC Plans over 20 weeks from the date of request; and by March 2024 this had reduced to 167. A discrete team was put in place to clear the backlog. The cumulative total of plans issued within 20 weeks for 2024 is 54%. The 60% target in the SENDPAIP was to be met by 30 April 2024. I consider broadly that target has been met. In April 2024 73% were issued within 20 weeks and whilst the cumulative total in 2024 is 54%, that number is affected by the backlog being cleared.
175. It is important to note that behind these statistics are children who are not receiving the special educational provision they require. Each individual delay causes a significant impact on a child's education, and often on their family. During this time children are not receiving provision they are statutorily entitled to. The HPCI spoke to me about how delays can lead to a huge escalation of need. I have read a number of stories in the survey data from individuals who set out very significant impact of delays on their children.

The SENDPAIP

176. The SENDPAIP provides for actions to address the current delays in the service. Of particular importance is the target within the SENDPAIP to improve the timeliness of issuing new EHC Plans to 60% within 20 weeks from the request, which I am asked about (ToR question 5.2).
177. This was one of the points which Z was particularly troubled by, given the absolute legal duty to issue all EHC Plans within 20 weeks. He considered this disclosed an intent not to comply with the law. There is clear logic in this position.
178. The wider context as set out above is relevant. The national picture of compliance with the 20 week target is perhaps not entirely surprising given the significant increases year on year of EHCNA requests, EHCNAs and EHC Plans (incidentally which far exceed the number of statements⁶ which existed at the time the CFA 2014 was passed by Parliament), at a time where local authorities are facing challenges on funding generally.
179. All that having been said, there is an absolute legal duty to issue the EHC Plan in 20 weeks. The Council cannot lawfully depart from that. The Council, with agreement of the DfE and Ofsted, has set the 60% target as a realistic and appropriately ambitious given its starting point. The Council has pointed out to me that this would be above the national rate and the average of the Council's statistical neighbours. It states that the long term aim is to reach 100%, but considers it is important not to overpromise and under deliver. Alongside this target, the Council states it aims to ensure that where there is a delay, the reasons are communicated to families and schools and reassurance is given.
180. Given the absolute legal duty to issue an EHC Plan in 20 weeks, Z takes a clear position that any target below 100% is unlawful. He is right to the extent that any target below 100% inherently means in a number of cases the Council is accepting it will not comply with its

⁶ A statement was the equivalent of an EHC Plan under the previous legal regime

legal duty. However, it is important to acknowledge the reality of the situation and this is what has been set as an appropriate target as part of the SENDPAIP. There is no point having a target that is unachievable, and of course the ultimate target is to reach 100%. Now the 60% target has broadly been met, it follows that the Council should consider and set out how it will progress further to the ultimate aim of 100%. As the target is part of the SENDPAIP and is monitored within the governance structures covered in Chapter 3 of this report, I do not make a formal recommendation on it and leave it for that process.

181. My primary concern in this review is ensuring the Council has the right infrastructure in place to reach as close as possible to 100% as quickly as possible.

The process following a decision to assess

182. Following a decision that there should be an assessment, the Council's internal guidance sets out the timeframe, which is also reflected in the training for CIAOs:

- a. Immediately after a decision to assess is taken, the LMAG Panel Chair records the decision on the LMAG spreadsheet and identifies who advice should be sought from.
- b. Within the initial 6 week period from the date of request, the parent is sent a letter confirming the decision to assess and are contacted by telephone to discuss the EHCNA and timescales. Advice requests are also sent to relevant professionals.
- c. Within 6 weeks from when advice requests are sent out, the CIAO monitors the return of advices and the content of those advices to check whether sufficient information is received.
- d. Within 16 weeks from when the request for assessment was received, the EHCCo, in conjunction with their Team Lead/Manager, decides whether to issue a draft EHC Plan or provide written feedback. In the latter case, the parents are informed by telephone and letter with detailed reasons why the decision has been made.

183. At week 7 the case is passed on to an EHCCo, although the CIAO still checks and chases advice. However, I understand from the Council that it is the EHCCo who ultimately monitors the overall timeline.

Why an EHC Plan may be issued late

184. I am asked to consider why the Council is not completing all EHCNAs within the statutory time limit (ToR question 5.3), whether further steps could be taken over and above the SENDPAIP (ToR question 5.6) and whether budgetary issues have impacted service delivery (ToR question 5.7).

185. Due to the requirement to obtain advice from various sources, both from other teams within the Council as well as the ICB, issuing an EHC Plan within the required 20 weeks depends on a number of workstreams functioning effectively. A blockage in any one of those workstreams will have a knock on effect on the 20 week period.

186. There has been more than one historic blockage within the system in respect of EHC Plans being issued by the Council. I will consider the following workstreams in turn, as being the ones which are particularly pertinent to the issues I am considering:

- a. EP advice
- b. SLT advice
- c. Social care advice
- d. The drafting of the EHC Plan following receipt of advice

187. In order to meet the 20 week time limit, the Council seeks advice by week 12 from the date of request (which is 6 weeks from the decision to carry out EHCNA and when advice is sought). However, even if it receives advice by week 16, it aims to issue by week 20.

EP advice

188. Historically, the capacity of the EP service has been a significant cause of the delays in issuing EHCNAs. The wider context is relevant – there is a well known nationwide shortage

of EPs, and this has been the picture for the last 5 years. One factor is that there are only 13 universities in England which offer the professional three year doctoral programme with each having a limited number of spaces.

189. At the Council, there are 38.1 FTE educational psychologists; and in April 2024 there were 25.5 vacancies (this is across all levels).
190. Since November 2023, when the EP service moved outside the Council's 'Integrated Services for Learning' in order for it to have greater strategic influence, it looked at methods by which it could improve on delivering the Council's statutory duties within the constraints it had. This has led to a number of strategies.
191. First, the service has adopted a model of using Collaborative Involvement Meetings ("CIMs") instead of formal written EP advice where appropriate. These have been used since the start of October 2023 and are now used widely. They generally occur at week 12, and are chaired by an EP with a focus on co-produced outcomes and provision, involving parents/carers, staff, other professionals (where relevant) and young people. From 1 September 2023 to 31 March 2024 there were 1344 new EHC Plans issued, and in 278 of these a CIM took place.
192. I have seen a number of examples of records of CIM. The records are structured, and look fairly similar to an EP report, with outcomes, strengths, needs and suggested provision. That has been put together through the discussion at the CIM.
193. At the end of each CIM record there is a QR code for feedback. The available survey evidence, albeit limited at this stage, shows individuals who have had a CIM as having been satisfied. The highest ratings were on "I feel the issues were understood" and "I was able to participate fully". I have seen various comments from feedback which provide further background to those ratings: for example "both my son and I felt very validated"; "Very good information/interaction. Great to have multiple people present that know my son and his traits"; "A really useful process and positive experience of joined up working between family and education". A CIM provides further, and significant, communication between the Council and parents. It increases the visibility of the decision making process which addresses concerns in survey data on communication.

194. In addition, the view of the Council is that this was a significant driving factor as to the increased percentage of EHC Plans being issued within 20 weeks at the end of 2023.
195. Second, the Council has developed a Recruitment and Retention Strategy. At present, the Council has had to increase outsourcing to locum and agency EPs which has significant financial implications and is not sustainable. It is also not conducive to EPs building continuous relationships with educational settings.
196. For these reasons, the Council has set to grow its own workforce at all staffing levels:
- a. In April 2023, 8 new Assistant EP posts were created, the rationale being this cohort usually go on to gain a placement on the three year doctorate programme. Assistant EPs support EPs in collating information for EHCNAs, among other tasks. By September 2023 five of these posts were filled, and by November 2023 all posts were filled.
 - b. The Council offers Trainee EP placements as an incentive to continue working for it post training. The Council pledged for 4 trainee placements. 3 of its current trainees will be joining as newly qualified EPs from September 2024.
 - c. The EP service has a total of five new EPs starting in September 2024, which is the highest number it has had joining at one time since 2019. This was through developing links with universities, although the consortium the Council was part of is no longer available next year which constitutes a challenge.
 - d. The EP service has increased the number of Senior EP roles from 4 to 8, and recruitment will begin shortly.
 - e. The EP service has diversified its advertising for roles.
 - f. The EP service has had a member of staff join from overseas through provision of sponsorship. The Council is taking advice on the feasibility of exploring this route further.

197. Meanwhile, the Council has worked to incentivise employees, in order to limit the numbers leaving to other authorities to work as locums. This has included a robust CPD programme and flexible working arrangements. In addition, it has sought to offer a balance of statutory and non-statutory work. The approach was agreed with relevant unions. This appears to be working. From September 2022 to September 2023, there were 6 leavers and 3 joiners (net -3.8 FTE), and from October 2023 to September 2024 there will be 1 leaver and 5 joiners (net +4.2 FTE).

198. The above measures, and in particular the introduction of CIMs, has led to a reduction in the number of out of time advices provided, but the numbers are not yet at a level which are acceptable. The service has also outsourced advices to agency locums to help address the shortages of EPs. In the last year the number of out of time advices from the EP service are as follows:

Month	% of out of time advices
May 2023	75%
June 2023	68%
July 2023	71%
August 2023	71%
September 2023	80%
October 2023	79%
November 2023	62%
December 2023	57%
January 2024	48%
February 2024	52%

March 2024	63%
April 2024	65%

199. These statistics include both CIMs and written advice. The reduction in the number of out of time advices from October 2023 is probably due to the introduction of CIMs – on the available data, 80% of advice through a CIM is in time. However, the majority of advice is still not provided through a CIM.
200. The EP service continues to develop its processes for recording data on timing. At present many CIMS are not fully recorded (and actually, if they were, this may improve the overall percentage of EP advices provided on time). It is critically important that the timing of EP advices are recorded to ensure the Council can be assured of its compliance with statutory deadlines.
201. In addition, whilst the EP service is clearly adopting an overall approach to improve the delivery of statutory advice for EHCNAs, I have not seen that approach formulated as a specific strategy which is tied to deliverable targets. I consider this is also critically important otherwise it is not possible to understand the efficacy of measures and whether additional measures or resources are required.
202. I understand the national picture for EPs is a significant constraint on the Council. However the timeliness of EHCNAs is an absolute statutory duty and I have sought to provide a recommendation that ensures the EP service places appropriate emphasis on it and ensures maximum fulfilment.
203. To ensure accountability for the strategy, I consider that there should be a report to the Education, Libraries and Lifelong Learning Cabinet Committee by the end of January 2025, as by that time the impacts of new recruits in September 2024 will be clearer. This should be similar to the report of the EP service to the same committee in April 2024.

204. Recommendation 13: The EP service should devise a specific strategy for improvement of its delivery of EP advices within 12 weeks of an EHCNA request.

This should include:

- a. Measures to ensure the data on timeliness of EHCNA advice is recorded in a single place.**
- b. An appropriate target for delivery of EHCNA advice by week 12 between now and September 2024 (when the additional EPs will start in their role).**
- c. Measures, including use of locum EPs, for ensuring the target is met between now and September 2024**
- d. An appropriate target for delivery of EHCNA advice by week 12 from September 2024.**
- e. Any additional measures required to meet the target from September 2024.**

The strategy, and the success of the strategy against targets, should be reported to the Education, Libraries and Lifelong Learning Cabinet Committee by the end of January 2025.

SLT advice

205. Advice from a SLT is not one of the pieces of advice mandated by regulation 6(1) of the SEND Regulations 2014, however, it will generally be advice sought by the Council as “appropriate” under regulation 6(1)(f). Historically, this advice has been a cause of delay in issuing an EHC Plan within 20 weeks.

206. The SLT service, which provides the advice, is commissioned jointly by the Council and the ICB, and is provided by the Trust. The relationship is governed by a contract by which the services are commissioned.

207. By way of brief history, a new contract was entered into in 2018. However, by 2020/2021, following an increase in demand and a pause on EHCNAs due to the pandemic, the KPIs

in the contract were not met and a 'critical performance default notice' was issued by the Council and ICB. Between 2019/20 to 2022/23 there was an increase in 57% for EHC Plan referrals; and by 2020 only 25% of EHC Plan SLT assessments were being completed within the 12 weeks from the date of the EHCNA request.

208. The contract specification was reviewed in 2021/22, taking account of delivery models in other areas, and a transformation programme was established which included an increase contract value of £1.9 million. In 2023, the revised specification and transformation was implemented; monthly monitoring meetings took place; and schools and families were brought in as part of the contract management. In 2023, the critical performance default notice was withdrawn.
209. Paragraph 1.8 of the SENDPAIP addresses the issues in receiving SLT advice for EHCNAs. It states "We will improve waiting times for speech and language therapy in line with statutory requirements for education, health and care needs assessments by July 2024". One of the milestones was "Additional EHCP focused clinics to reduce waiting times for EHCP initial assessments. Approach to be reviewed prior to wider roll out"; and the impact was that the "backlog and waiting times are reduced for EHC needs initial assessments".
210. The transformation process included a number of significant measures across the SLT service, which was intended to provide the infrastructure for improvement. Of particular relevance to the EHCNA process:
 - a. 9 'Education Lead' posts were created to lead SLT in school clusters and be a point of contact. These were additional SLTs within the service.
 - b. A new team was established to deliver training to schools and early years settings to add capacity which frees up qualified SLTs for EHCNAs and other priorities.
 - c. Workforce recruitment occurred, introducing apprenticeships and the ability to progress within posts on completion of relevant competencies; rotational posts which provide professionals with experience of both adult and children's therapy

services which attracts applicants; use of locum SLTs; international recruitment; golden hello packages; and 'return to practice' offers.

- d. The Trust has procedures to engage an external private SLT agency to increase service capacity including offering weekend appointments.
- e. The appointment of 'Resolution and Reconciliation Lead' posts, who have managed SEND appeals and mediation to encourage earlier resolution. This has impacted on the children whose appeal is being dealt with, but has also freed up qualified SLT time where a case is resolved without a hearing.
- f. There was a 'Christmas catch up' in December 2023 and January 2024 where over 500 assessment appointments were offered in clinics to clear the backlog.

211. The workforce initiatives have led to an improvement in the vacancy rate, which is now 14% (7.5% with outsourcing included). The vacancy rate in September 2023 was 28%.

212. The most recent data for those currently waiting for SLT advice for EHCNAs has been provided to me:

Wait from date of advice being requested	Sept 2023	Oct 2023	Nov 2023	Dec 2023	Jan 2024	Feb 2024	Mar 2024	Apr 2024
0-6 weeks	128	82	99	105	120	100	125	115
7-12 weeks	97	115	67	68	58	52	65	81
13-18 weeks	77	96	97	80	47	16	32	53
19-24 weeks	96	61	83	70	54	5	3	3
25-30 weeks	68	93	54	70	39	14	3	0

31-36 weeks	43	65	52	58	16	17	5	1
37-42 weeks	22	34	39	42	36	11	4	1
43-48 weeks	29	19	32	29	27	11	3	2
49-52 weeks	22	20	9	14	18	4	3	0
1-1.5 years	79	85	90	83	48	25	8	4
1.5-2 years	2	2	5	17	21	6	4	2
Total	663	672	627	636	484	261	255	262

213. This demonstrates the measures appear to be working, and in particular:

- a. The enormous backlog has now been cleared. The numbers in late 2023 are fairly startling, with a huge number of children waiting for SLT advice for over a year when it should have been provided within 6 weeks.
- b. In the most recent months the majority of reports are being delivered within the 6 week window that is required by the Council. Where there is a delay, the reports are generally being delivered within 7-12 weeks or 13-18 weeks. Very few are beyond 18 weeks. Within those figures, there will be some instances where a child has missed an appointment so the delay will not always be attributable to the Council.

214. The impacts of the improvements to the infrastructure are, however, still at an early stage. The service aspires to have a 100% delivery rate within 6 weeks and is considering further measures which will assist in the timescales, including another backlog catch up if necessary. It seems to me of importance that there are clear monitoring systems to ensure the current rate of progress is maintained. I was informed the monitoring is as follows:

- a. Since December 2023, a Deputy Designated Clinical Officer had worked with the Team Lead for each of the four county quadrants, and worked to match capacity in clinic to the referral rates to ensure there are enough clinic appointments.
- b. The commissioning contract contains data monitoring provisions. There are two key meetings where data is formally reported and monitored:
 - i. The monthly therapies steering group meeting is attended by the Trust, Council and ICB. This is a focused group of senior managers who review the monthly data report, ensure there is clarity on potential future issues and agree further SLT service improvement opportunities.
 - ii. The termly formal therapies contract review meeting is to formally monitor contract performance against KPIs, one of which is the delivery of assessments for EHCNAs. The indicator is set so that 95% of SLT advices for EHCNAs are provided within 30 working days.

215. As such, the termly review meetings monitor whether assessments for EHCNAs have been carried out within 30 working days, which is (broadly) 6 weeks and in accordance with the overall timeline to ensure an EHC Plan is issued within 20 weeks of the request. Given the historic issues on SLT advices for EHCPs I suggest that, to the extent it is not already, the Council should be made aware at the monthly meetings if the performance for that month is less than 95%.

216. Recommendation 14: For the Council to seek assurance from the Trust that it will be made aware at the monthly therapies steering group meeting if 95% of SLT advices for EHCNAs were not delivered within 30 working days that month.

Social care advice

217. In broad terms, the timing of social care advice has not been a significant factor in the delays in issuing EHC Plans within 20 weeks from the EHCNA request. I have been provided monthly data since January 2023, and the overall percentage of advice returned

within 6 weeks is 97.6%. The lowest month was September 2023 with 92.4%, however most months have been above 96%.

218. The acknowledged issue in respect of social care advice has been its quality, on which measures have been taken. In January 2023, the Designated Social Care Officer reviewed operating procedures and practice, identifying areas to improve the service including in relation to EHCNAs. In March 2023 a business case was created for new investment, which included social care screening capacity for all children not known to social care at the point an EHC Plan is requested, which was agreed in May 2023.
219. In September 2023, an implementation plan was made for an 'advice hub' which was launched in March 2024 as the 'Social Care Advice Pod for EHCPs' (SCAPE). SCAPE will start responding to initial requests, and once they have found their feet will take on reviews of existing EHC Plans.
220. Three new Social Care CIAOs (who are part of the Children's Services Social Care Gateway) started in the SEND Academy in January 2024 and are now operational. Through MSEB funding, the team is now led by a new Consultant Social Worker, who supports CIAOs and provides direct line management. The Social Care CIAOs gather information for social care assessments, and the Consultant Social Worker supervises and reviews these sections.
221. The quality of advice is not strictly within my ToR, but I note these measures because I received evidence on them and they appear to be of some importance in relation to ensuring the quality of advice for EHCNAs.

Drafting the EHC Plan

222. Once the assessment reports have been received, which should have occurred by week 12 from the request for an EHCNA, then the Council must draft an EHC Plan which is provided to parents and the school for comment. At the Council, that task is undertaken by an EHCCo.

223. There was significant investment into the capacity of the EHCCo team through MSEB. Prior to MSEB, the full capacity of the EHCCo team who drafted EHC Plan was 12, but they were not fully staffed. Through the MSEB investment and recruitment programme, 4 additional posts were created in the team comprising 1 casework manager and 3 EHCCos. There is only one post left to recruit for.
224. This capacity appears to have led to significant improvement in the timing of drafting EHC Plans. I have received weekly data, from 12 February 2024 to 29 April 2024, as to the number of EHC Plans issued on time where the assessments have been returned by the 16 week timescale. In no week has the percentage gone below 84%. In 8 of the 12 weeks the percentage has been 90% or above, and in one week (where there were relatively few EHC Plans due to be issued) the Council reached 100%.
225. As such, although it is early, it appears the delays in relation to the drafting of EHC Plans are being resolved through increased capacity. What is now required is ongoing monitoring of this process to ensure the EHCCo capacity for drafting remains sufficient so that where advice is provided on time all EHC Plans are issued within the 20 week period.
- 226. Recommendation 15: Add to the monthly child level reports the number of EHC Plans which have been issued within 20 weeks, where all advice has been provided by week 12.**

Communication

227. The Council has emphasised the need to bolster communication with parents. The issues surrounding communication to date in my view have been a considerable source of mistrust. Where there is a delay, upfront acknowledgement of that with an explanation and the timescales going forward is clearly something that is required. As mentioned above, a particular issue has been that cases have passed the 20 week point (often well beyond) with no communication to parents. I have received numerous reports of this happening. I have been asked whether parents are informed of delays and the reasons for delays throughout the EHCNA process (ToR question 5.5).

228. Communication during the EHCNA process was cited as a very significant concern by parents. Communication was a key theme in the most recent HPCI survey. The coordinator at SEND Crisis Hertfordshire said parents found they “could not get hold of anybody” and “no one knows who their officer is”. The volunteer at SOS!SEN suggested there is a barrier to put parents at an arms length from an EHCCo, and an entire process can occur where the parent is not spoken to. I do not consider there ever to have been a deliberate attempt to create a barrier, but there clearly have been communication issues in the past.
229. With the capacity issues to date, it seems to me very predictable that there would be communication issues. Part of the Council’s strategy on communication relates to the increase in capacity. As CIAOs and EHCCos will have a smaller caseload going forward, they can have greater oversight on each of their cases. This will also ensure they will check in with parents at the beginning of the process as set out in the guidance and training materials.
230. With that in mind, I consider that once a decision is made that an EHCNA will be carried out, the CIAO should diarise key points in the process to proactively check on the progress of the case (for example, week 12, 16 and 20). It seems to me that by week 12 (when assessment reports are due) it may already be clear there will be a delay. If at any of those points an update is required to parents, then that can be done.
231. This will particularly address the concern that the 20 week deadline is passing without any communication. The CIAO will have diarised the date and will update parents if required to do so. I consider the Parent Portal will be a significant development in the communication. Moving forward, it may be the Parent Portal removes the necessity for such check ins by the CIAO, but that can be reviewed once it is fully live.
- 232. Recommendation 16: Where a decision is made to carry out an EHCNA, the allocated CIAO will diarise key points to proactively check the progress of the case and update the parents as necessary. If there is any delay, or likely delay, the parents will be informed of the reasons and be provided with timescales for resolution of the issue. If this is a telephone call, then it should be followed up by a short email.**

233. I also have been informed the Council is changing the way phone calls are received for queries regarding EHCNAs. At present, the phone calls go to the Customer Service Centre and are redirected. The Council now plans to have a direct phone line which is manned by a manager in the Front Door and Assessment Team so parents can phone directly for an update. This is due for a slow launch in September 2024. The Council specifically wanted a manager to take the call so there would be someone who could take an action if that was required. I was slightly concerned about the time this may take from the manager, but the idea was to invest time at the outset to save time later, avoiding time taken where there would otherwise have been a point of distress or crisis. This proposal by the Council seems extremely sensible and I suspect will be very well received by parents.
234. Email traffic remains an issue for the Council, and I understand often emails will be received where a large number of recipients are copied in. The hope is that if parents are clear at the outset of who the point of contact is, that will alleviate some email traffic. In addition, with the phone line, this may also reduce the necessity to send emails. This may be right, but the Council should continue to monitor its efficacy of responding to email traffic. There may be some parents who for a variety of reasons (e.g. disability, work commitments, etc) may find it difficult to call but are able to send an email. For these individuals, email particularly is important.
235. In summary, through these measures, there should be set points where the CIAO is proactively checking in on the progress of an EHCNA; and there will be greater communication between the CIAO and parents. If the parents seek any further information there will be a phone line. Incorporating my recommendation, I consider this a robust plan to deal with the issues of communication to date during the EHCNA process.

What happens at 20 weeks if the plan is not ready?

236. One issue that arises when one or more reports are still outstanding at 20 weeks is whether the Council issues an EHC Plan at that stage and then re-issues an updated version when the outstanding assessments are received; or waits for the outstanding assessments and issues the EHC Plan once. One parental representative said they would prefer the EHC Plan to be issued and re-issued. However, there may be others who would prefer to wait.

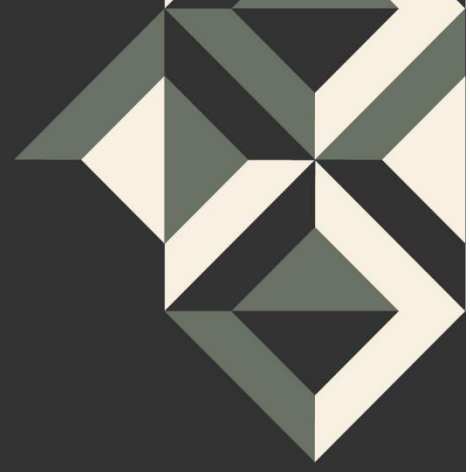
Some suggested issuing and reissuing enables the Council to bolster their statistics on the percentage of EHC Plans issued within 20 weeks of the EHCNA request.

237. The Council's policy on this is sensible. It informed me there will be a conversation with the parents to explain the options and ultimately it is the parents' choice. It would be sensible that the parents confirm their position in writing to avoid any confusion later on. If a decision is made to issue and then re-issue, it is absolutely crucial the second EHC Plan is, in fact, re-issued as that is what generates an appeal right to the FTT.

238. Recommendation 17: The Council policy on whether to issue an EHC Plan where one or more assessment reports are outstanding at 20 weeks is made clear to EHCCos in induction and training materials.

Equality

239. I have been asked whether there are disparities between how different groups are treated during the EHCNA process, such as those receiving free school meals or different ethnic groups (ToR question 5.4). I did enquire with the Council and Z whether there was a particular issue which lay behind this question, but neither party was able to assist. The Council do not have data which would enable me to investigate this as a matter of generality. There is some data on the ethnicity of, for example, those who have an EHC Plan. In 2023, 73.3% those with an EHC Plan maintained by the Council are white, compared with 79.6% of those in comparator authorities and 68.5% nationally. However such data does not assist in being able to understand the experience of different groups during the EHCNA process.



Concluding Remarks



240. In questions 6.1, 6.2 and 6.3 of my ToR I am asked about how the MSEB investment has been used, and the accountability arrangements to ensure changes are implemented. I have dealt with these points throughout this report and made observations and recommendations on changes that have occurred and those which are planned.
241. I do not think there is any doubt that there have been historic failings of the Council in respect of the EHCNA process. These have already been noted in the Ofsted and CQC report. That is why, as explained at the very start of this report, the Council had always been clear to me that it was on an “improvement journey”.
242. As an independent observer I have come away from this review with an overall positive view of the Council’s direction of travel:
- a. I consider the Council as a whole has identified the issues in the EHCNA process and made significant financial investment to enable the leaders who deal with the process to make improvements.
 - b. Using the investment, since September 2023 the Council has made focussed improvements to the EHCNA process, primarily through use of the SENDPAIP, and with oversight from bodies within and outside the Council.
 - c. The leadership of SEND services within the Council has impressed me. In my discussions with leaders they have always been transparent about flaws I have identified; they have never sought to challenge parental views on what is going wrong, rather they have sought to identify solutions; and they have always appeared to be focussed on delivering improvements.
 - d. The Council has reached a stage where most of the infrastructure for continued improvement, particularly in relation to recruitment and capacity, is now in place or will be imminently. Some of the progress in this respect has been extremely impressive. I particularly cite the huge amount of recruitment that has occurred into the SEND service, along with the SEND Academy training programme.

- e. The results of the investment into the infrastructure are just beginning to come through, and I do not see any convincing reason why that should not continue. There are further improvements to the infrastructure to come, most significantly the Parent Portal which I consider will be of great significance to the parental experience during the EHCNA process.

243. I lastly thank all individuals who have taken the time speaking to me, emailing me and providing me with documents. This has enabled me to consider the issues raised in the ToR thoroughly, and I hope this report will lead to further improvements in the EHCNA process at the Council.

APPENDIX 1: TERMS OF REFERENCE

Introduction

This document sets out the framework for the Independent Review, commissioned by Hertfordshire County Council of its Education, Health and Care ('EHC') Needs Assessment process.

The Independent Review will examine the EHC Needs Assessment process at Hertfordshire County Council, including the initial decision on whether or not to assess a child or young person, appeals against refusals to assess, concessions in refusal to assess appeals, and the subsequent completion of the EHC Needs Assessment. This review will take account of the current national context. The aim of the Independent Review is to report on the operation and effectiveness of, and potential improvements to, the EHC Needs Assessment process in Hertfordshire.

Background

This Independent Review follows the Judicial Review claim in the High Court of ***W, R (On the Application Of) v Hertfordshire County Council*** [2023] EWHC 3138 (Admin).⁷ This case involved a litigant in person who brought a claim against Hertfordshire County Council regarding the delays in finalising his child's EHCP. Whilst the case mainly dealt with the Claimant's individual case, it also raised issues regarding the way in which the local authority carries out its decision-making process in relation to EHC Needs Assessments. The judgement handed down on 8 December 2023 encouraged the Claimant to seek legal advice in respect of a potential challenge to supporting his view of systemic failings, "the wider policy challenge". The parties have agreed that the more appropriate way forward would be for there to be an independent review into the Defendant's decision making and practices, commissioned by Hertfordshire County Council.

⁷ See here: [W, R \(On the Application Of\) v Hertfordshire County Council \[2023\] EWHC 3138 \(Admin\) \(08 December 2023\) \(bailii.org\)](#)

In July 2023, the local area partnership involving HCC and Hertfordshire and West Essex Integrated Care Board (HWE ICB) were found by Ofsted and CQC to have systemic failings leading to poor experiences and outcomes for children and young people with SEND. This report was published in November 2023. Two areas for priority action and five improvement areas were identified as requiring attention from the council and the ICB. Of the five improvement areas, one directly related to the quality of EHCPs.

Actions within the improvement plan had already been started prior to the inspection to address issues in this area. This included £5m investment in July 2023 for the recruitment of more than 80 new frontline staff to facilitate the statutory compliance of the EHCP process; with a dedicated recruitment programme valuing lived experience and transferrable skills. The Authority has now recruited to all of these posts, demonstrating a serious commitment to not only learning from lived experience but by employing staff who possess a good level of empathy, understanding, knowledge and skill in this area, with an overall commitment to urgently improving workforce capacity, skills and decision-making.

In January 2024, further to Ofsted and DfE approval of the Priority Action and Improvement Plan and refreshed governance structure to oversee it, the Council published its Improvement Plan and Improvement Notice on its website. There is an independent executive board overseeing progress towards the priority actions and improvement areas, chaired by an independent chair approved by the Department of Education, Dame Christine Lenehan, previously Director of the Council for Disabled Children.

Terminology

“Claimant” – W, a child, represented by her father and litigation friend, Z

“CFA 2014” – Children and Families Act 2014

“Defendant” – Hertfordshire County Council

“EHCP” – refers to Education, Health and Care Plan

“EHCNA” – refers to Education, Health and Care Plan Needs Assessment

“IR” – Independent Review

“LA” – refers to Hertfordshire County Council

“Reviewer” – the person conducting the IR as set out under (i) of the Terms of the IR

“SEND Tribunal” - First-tier Tribunal (Special Educational Needs and Disability)

Terms of the IR

- i. The Reviewer will be an independent barrister in private practice agreed by the Claimant and Defendant.
- ii. The Reviewer is permitted to request, and gain access to, any documents held by the LA that are relevant to the IR, including case files.
- iii. The Reviewer will be permitted to interview those people he deems relevant to the IR.
- iv. The Reviewer will interview the Claimant’s litigation friend and will have access to all documentation used in the Claimant’s Judicial Review, including the final hearing bundle.
- v. The Reviewer is permitted to accept and consider any representations made by the LA and the Claimant,
- vi. The Reviewer will be able to interview and obtain written responses from members of the newly formed SEND Executive Board. (agreed with the Department of Education and Ofsted/CQC in January 2024) which provides independent scrutiny and governance for its Priority Action and Improvement Plan, including the Independent Chair, key personnel from the LA, ICB, Schools and Parent-Carer representatives.

The Reviewer is able to work with any individual or organisation, including the HPCI, to gain further information that might be relevant to this IR, and to gain further viewpoint from a parent /carer perspective for this IR that may be needed.

- vii. The Reviewer is permitted to request available statistical data and the LA will provide the data promptly as requested.
- viii. The costs of the IR will be covered by the Defendant.

Timescales

Upon the Terms of Reference being agreed, the Reviewer can provide an initial indication of how many hours of work are likely to be required and an initial number of reasonable hours can be agreed between the Reviewer, the Claimant and the Defendant.

However, should the Reviewer indicate that additional time is necessary and provide evidence of his reasoning, he should liaise with both a representative from the LA and a representative for the Claimant who will agree the appropriate course of action, i.e. whether any extension of time can be provided and, if so, how long. However, Hertfordshire County Council, as commissioner of the report will make the final decision if an agreement cannot be reached.

It is envisaged that the Reviewer will submit a final draft report within 6 weeks, which will include clear and actionable recommendations for improvement.

The draft report will be shared with Hertfordshire County Council in order that they may review and consider the same in light of their legal responsibilities as a statutory body and provide further comments to the Reviewer upon the same within 7 days. Any comments sent to the Reviewer by the Defendant will be shared with the Claimant for transparency, subject to any legal restrictions.

The Reviewer shall then further consider the draft report and, if appropriate amend in light of the Defendant's comments

The Reviewer shall then share the draft review with the Claimant, whom has a further 7 days in which to submit his comments to the Reviewer. Any comments sent to the Reviewer by the Claimant will be shared with the Defendant for transparency, subject to any legal restrictions.

The Reviewer shall then further consider the draft report and if appropriate amend in light of the Claimant's comments. Neither party should attempt to interfere with the findings and outcomes found by the Reviewer.

The Reviewer will thereafter have 7 days to finalise the report, which will be shared with the Claimant and the Defendant. Hertfordshire County Council will then have 7 days to publish the final report, which will be made public.

Within 14 days of the report being published, Hertfordshire County Council will publish a publicly available response to any recommendations, including timeline for implementation.

Scope

The following points indicate the key issues the review should cover. The Reviewer will have discretion to consider other related issues that arise during the course of the review.

1. EHC Needs Assessment Request

The Review will consider the initial EHC Needs Assessment Request process made by either a parent, young person, school, or college. In particular, how the statutory deadlines are complied with, what happens if the deadline is missed, and how the LA deals with any delays and/or missed deadlines. The Review will consider the following key points:

- 1.1. Once an EHCNA request is made by a school, parent, or young person, what steps are taken by the LA to ensure that a decision is made within the statutory 6-week deadline?
- 1.2. What, if any, internal mechanism does the LA have to flag when the statutory 6-week deadline has passed?
- 1.3. What steps, if any, are taken if the 6-week deadline has passed? Is there a mechanism for identifying any requests which have not been dealt with within the deadline.
- 1.4. Will the parent or young person be informed that the 6-week deadline has passed? If not, why not?
- 1.5. How does the LA ensure oversight of the assessment request process and that the LA is complying with its statutory obligations, as well as ensuring the criteria under s36 CFA 2014 are complied with when deciding whether or not to conduct an EHCNA?

What is the reporting mechanism to LA councillors / cabinet members on LA performance on this?

- 1.6. Are there any policies or practices (whether written or unwritten) that are contributing to the delays in making a decision once a request has been made, and if so, what are they?
- 1.7. What are the eligibility criteria and practice, in writing or otherwise, in relation to EHC needs assessment requests?
- 1.8. Are there any key areas for improvement in this respect.

- 1.9. Is the LA applying appropriate use of criteria / thresholds when determining whether to undertake EHC Needs Assessments?
 - 1.10. Does LA practice / policy enable accurate decision making for EHC Needs Assessments, and if so how? How can this be improved further?
 - 1.11. Does the LA have any practice or policy (whether or not it is confirmed in writing) of deterring or discouraging EHC Needs Assessment Requests by imposing immaterial/irrelevant eligibility criteria or through other means?
2. Refusal to assess.

The Review will consider the LA's process with regards to the decision to refuse to assess. In particular, how the decision is made, who makes the decision, and how parents and young people are informed of the decision. The following key points will be considered:

- 2.1. Who makes the final decision not to assess, how do they come to that conclusion, and what training have they received? Where there are areas for improvement, are these addressed through the council's additional staff and training programme, through the SEND Academy?
 - 2.2. Does the LA have (or previously had) a standard template letter that is sent to all parents / young people refusing an EHCNA? Is this letter sufficiently tailored to the individual outcome relating to the panel discussion of refusal to assess? To what extent is this letter compliant with s36 CFA 2014?
 - 2.3. What is working well and how can practice be improved within the LA to ensure accuracy and consistency of decision making when considering requests for EHC Needs Assessments?
 - 2.4. How does the LA determine cases that could be considered 'borderline'? Are 'borderline' cases automatically refused?
 - 2.5. Does the LA have a practice of refusing to assess where requests are supported by clear evidence of needs that merit assessment?
3. Reviewing the decision once an appeal is lodged.

The Review will consider how the LA deals with refusal to assess appeals lodged at the SEND Tribunal. It is noted in *W, R (On the Application Of) v Hertfordshire County Council* that “99% of appeals in a recent year were either conceded in advance of a hearing or lost at a hearing”⁸. Whilst this is consistent with the national picture (98%), it is relevant that the Review considers how and why the LA conceded in these appeals in order to help identify areas for improvement. The following key points will be reviewed:

- 3.1. Once an appeal is lodged at the SEND Tribunal against a refusal to assess, how does the LA review the merits of the appeal and within what timescale?
- 3.2. What internal processes are undertaken once an appeal is received?
- 3.3. How does the LA decide to concede in a refusal to assess appeal i.e., what steps are taken and how is the final decision to concede arrived at?
4. Conceded refusal to assess appeals.

The Review will consider how the LA deals with conceded refusal to assess appeals and whether there are any differences between conceded matters compared to standard EHC Needs Assessments. Key points to consider include:

- 4.1. What processes does the LA follow after concession of an appeal against a refusal to assess, and is the assessment process (including timeframes) conducted any differently to EHC Needs Assessments which have been agreed without the need for an appeal? How does this compare to practice elsewhere, so far as this information is readily available to the reviewer?
- 4.2. How does the LA ensure it is complying with assessment statutory timeframes once the appeal has been conceded?

⁸ Paragraph 12., *W, R (On the Application Of) v Hertfordshire County Council* [2023] EWHC 3138 (Admin) (08 December 2023) (bailii.org)

4.3. How are parents and young people informed of the concession and are reasons for the decision provided?

5. Reasons for EHCNA assessment delays

The LA has accepted that it is experiencing significant delays regarding its EHCNA process. The Review will consider what is causing the delays and the impact this has on the EHCNA process, including:

5.1 How many and what percentage of EHCNAs go over statutory time frames, and what are current trends, both locally and nationally?

5.2 Does the LA have an internal target to complete a certain percentage of EHCNAs within the statutory timeframe? If this target is not 100% what is the rationale for this target and what is the governance structure for this?

5.3 What is the reason(s) for the LA not completing all EHCNAs within statutory time limits? This should include consideration of systemic as well as operational reasons, including funding, workforce capacity, and decision-making.

5.4 Were there any disparities between how different groups were treated during the process (using pupil markers such as FSM/pupil premium status and ethnicity)?

5.5 Are parents and young people informed of delays and the reasons for delays throughout the EHCNA process? If inconsistent, what steps are being taken to address this?

5.6 What steps are being taken as part of the local partnership and LA's current published improvement plan and could further steps be taken to change this?

5.7 To what extent have financial pressures including any budget reductions impacted the EHC Needs Assessment process? For example, employing agency or temporary workers; workforce capacity? What steps are being taken to address this?

6. Resolutions

The Review will consider how the LA can remedy and improve the EHCNA process going forward. It will consider the following key questions:

- 6.1 The LA states it has “invested considerable additional resources in special educational needs assessments”⁹ – what do these consist of, are they likely to/are they making a difference, when is it expected they will make a difference, and how much of a difference will they make?
- 6.2 LA states it is “committed to making substantial investment and implementing changes to their system”¹⁰ – what does this consist of and is it likely to/ will it make a difference?
- 6.3 What accountability arrangements are needed / are in place to ensure that any changes are implemented, and can these be further improved?

⁹ Paragraph 36., W, R (On the Application Of) v Hertfordshire County Council [2023] EWHC 3138 (Admin) (08 December 2023) (bailii.org)

¹⁰ Paragraph 36., W, R (On the Application Of) v Hertfordshire County Council [2023] EWHC 3138 (Admin) (08 December 2023) (bailii.org)

APPENDIX 2: COLLATED LIST OF RECOMMENDATIONS

Recommendations should be implemented within eight weeks of the date of this report.

Timeframes for determining a request for an EHC Needs Assessment

Recommendation 1: Where an EHCNA request is received, the CIAO should diarise the 6 week deadline. If that passes and no decision has been made, they should always contact the parent to explain the reasons for that delay immediately. If this is initially a phone call it should be followed up by a short email.

Recommendation 2: Following consideration of the weekly child level report, the relevant Team Lead should discuss each case where the 6 week deadline has been missed with the relevant CIAO.

Decision making in determining whether to carry out an EHCNA

Recommendation 3: The key points from the case law on the EHCNA test are included in all induction and training materials for SEND Panel Chairs as well as attendees for LMAG Panels.

Recommendation 4: There should be a concise standing document for each LMAG Panel meeting setting out the legal test, to include the key points from the case law, which should be part of the introductory papers for every panel meeting.

Recommendation 5: Whenever a tribunal appeal is conceded, or otherwise determined by the FTT, the SEND Panel Manager who took the initial decision to refuse to assess should be provided with a note setting out the reasons why the decision was conceded, or a copy of a FTT judgment in the case of an appeal.

Recommendation 6: A member of the Council's R&R Team attends monthly moderation meetings between the SEND Panel Managers where refusal to assess cases are being discussed.

Recommendation 7: The monthly performance report should include reference to the number of refusal to assess appeals, those conceded, and (as at present) the numbers determined by the FTT for and against the Council.

Recommendation 8: The Council reviews and amends training materials and guidance to ensure that where it states the graduated approach is a relevant consideration, it is clear it is not an absolute criterion or pre-condition.

Recommendation 9: Where an appeal against a refusal to assess is conceded, a timeline should be agreed with the parent, and if an EHC Plan is to be issued then that should not be more than 14 weeks from the date of concession.

Recommendation 10: The Council should publish an accessible document setting out an introduction to SEN provision, to include the graduated approach, requests for an EHCNA (and test applied) and timelines for an EHC Plan. This should be concise and may be an introduction with relevant links to further information. It should also include links to other sources of assistance for parents such as SENDIASS. This should be readily available on the Council website and be handed out to parents when they meet Council officers to discuss SEND provision.

Recommendation 11: In relation to the communication of reasons of a refusal to assess:

- a. The template decision letter where there is a refusal to assess should be reviewed and rewritten. It should include reference to the legal test that the decision maker applied to be transparent. The term “more suitable pathway” should be removed.
- b. The Council should issue guidance to SISOs on the level of detail in the reasons given, which should directly address the legal test.
- c. Once a decision has been made at the LMAG Panel meeting, the Chair should check specifically with the SISO that they understand the reasons why it was considered the legal test is not met to ensure these can be properly communicated in the decision letter.

Recommendation 12: The guidance and training for SISOs in relation to ISMs should make clear that at every ISM:

- a. The school is provided with an opportunity to feed back any concerns about the refusal to assess decision and these are considered.

- b. Consideration is given to whether a check in is required with the parent and/or school in relation to the child's progress, and if so, when that should take place. If such a check in is agreed to be by the SISO, it should be diarised by the SISO.

Timeframes for issuing an EHC Plan following an EHCNA

Recommendation 13: The EP service should devise a specific strategy for improvement of its delivery of EP advices within 12 weeks of an EHCNA request. This should include:

- a. Measures to ensure the data on timeliness of EHCNA advice is recorded in a single place.
- b. An appropriate target for delivery of EHCNA advice by week 12 between now and September 2024 (when the additional EPs will start in their role).
- c. Measures, including use of locum EPs, for ensuring the target is met between now and September 2024
- d. An appropriate target for delivery of EHCNA advice by week 12 from September 2024.
- e. Any additional measures required to meet the target from September 2024.

The strategy, and the success of the strategy against targets, should be reported to the Education, Libraries and Lifelong Learning Cabinet Committee by the end of January 2025.

Recommendation 14: For the Council to seek assurance from the Trust that it will be made aware at the monthly therapies steering group meeting if 95% of SLT advices for EHCNAs were not delivered within 30 working days that month.

Recommendation 15: Add to the monthly child level reports the number of EHC Plans which have been issued within 20 weeks, where all advice has been provided by week 12.

Recommendation 16: Where a decision is made to carry out an EHCNA, the allocated CIAO will diarise key points to proactively check the progress of the case and update the parents as necessary. If there is any delay, or likely delay, the parents will be informed of the reasons and

be provided with timescales for resolution of the issue. If this is a telephone call, then it should be followed up by a short email.

Recommendation 17: The Council policy on whether to issue an EHC Plan where one or more assessment reports are outstanding at 20 weeks is made clear to EHCCOs in induction and training materials.

APPENDIX 3: LEON GLENISTER'S CV



Leon Glenister is a leading barrister in Education and Special Educational Needs law, as part of a wider practice which spans Public, Planning and Environmental Law.

He is ranked across Chambers and Partners and Legal 500 in six areas: Administrative and Public, Education, Planning, Environmental, Local Government and Social Housing law. He is described in the Legal 500 2024 as “one of the best public lawyers of his generation”.

Within his education law practice he has acted in a number of high profile cases, including the challenge to Ofqual’s grading of the A-level exams during Covid, challenges to the accreditation system for Initial Teacher Training providers and the Khalsa Academies Trust litigation on terminating academy funding agreements of faith schools. In special educational needs, he regularly acts in cases in the Upper Tribunal and First Tier Tribunal, and is the co-author of a free guide to special educational needs law, the ‘Noddy No-Nonsense Guide to SEN Law’.

He is a lead author on the second edition of 'NHS Law and Practice (LAG, forthcoming in October 2024), and is a contributing author to 'Children's Social Care Law' (LAG, 2018) and 'Adult Social Care Law' (LAG, 2019).

Leon is also a tutor in Administrative Law at the University of Cambridge.

