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## Failure to specify and quantify SEND reports - what options do families have?

By [Steve Broach](#)

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*with Emily Chalke, caseworker at Duncan Lewis Solicitors*



During the special educational needs assessment that can lead to an Education, Health and Care (EHC) Plan, expert advice and information must be sought by local authorities to establish the needs of the child or young person, the provision required to meet those needs and the outcomes intended to be achieved.

The LA needs this information to make a proper decision on whether an EHC Plan is required and what it should say. It is crucial that the resulting reports are sufficiently detailed and in particular,

1. identify all the child and young person's needs and
2. specify and quantify provision required to meet those needs. Unfortunately, many parents and young people are dissatisfied with the reports provided as part of the assessment.



## Lack of clarity

Families too often report failures by relevant experts to specify and quantify the reports they produce in relation to EHC needs assessments and Plans.

Given the high cost of obtaining independent expert reports, this causes great difficulty in many cases, in particular where LAs are unwilling to seek clarification. An inadequate report has a serious knock-on effect on the parent or young person's ability to obtain detailed provision. It can seem to families that they lack a sufficient remedy when this happens.

This article explores what families can do if they receive a report which in their view fails properly to identify needs or specify and quantify the provision required to meet needs.

## Seeking advice

The people from whom advice and information must be sought during an EHC needs assessment are outlined in regulation 6(1) of the Special Educational Needs and Disability Regulations 2014 ('SEND Regs 2014').

This includes

- advice from an educational psychologist (EP), advice from a health care professional identified by the relevant NHS body (usually at present the CCG),
- advice in relation to preparing for adulthood and independent living (where the child or young person is in year 9 or above) and
- advice from any other person the LA thinks is appropriate. This often includes speech and language therapists (SaLT) and occupational therapists (OTs).

Most of those receiving requests for advice will have a duty to co-operate with the Local Authority in providing that advice under regulation 8 of the SEND Regs 2014.

Some of the most important advice will be obtained from EPs, SaLTs and OTs, all of whom are among the 15 different kinds of health and care professionals regulated by the [Health and Care Professions Council \(HCPC\)](#).



The HCPC ensures that regulated professionals maintain a consistent and professional standard in their conduct. If an expert fails to meet these standards, the HCPC can investigate and act accordingly. In the most serious cases of misconduct, the sanctions available including 'striking off', meaning that person can no longer act in a professional capacity.

## Standards of conduct

The standards of conduct, performance and ethics for these professionals can be found on the [HCPC website](#) (). Notably for this issue, standard 3.4 states that the professional “*must keep up to date with and follow the law, our guidance and other requirements relevant to your practice*”.

Furthermore, standard 9.1 also states that the professional “*must make sure that your conduct justifies the public’s trust and confidence in you and your profession*”. When a parent or young person receives a report which does not fully identify all the needs and / or does not specify and quantify provision, it seems to us that this will inevitably damage trust and confidence in the profession.

The HCPC also has standards of proficiency for practitioner psychologists, [available here](#) (). These require EPs at 2.1 to “*understand the need to act in the best interests of service users at all times*”, at 2.5 to “*understand current legislation applicable to the work of their profession*” and at section 4 to “*be able to practice as an autonomous professional, exercising their own professional judgment*”.

There are of course multiple other standards within the 15 separate headings which may be breached where an EP fails to provide a lawful advice during an EHC needs assessment process.

## Statutory guidance

The statutory guidance with respect to the advice to be provided in an ECH needs assessment is at paragraph 9.51 of the SEND code of practice and is very clear:

“

*evidence and advice submitted by those providing it should be clear, accessible and specific. They should provide advice about outcomes relevant for the child or young person’s age and phase of education and strategies for their achievement”.*



Whether the assessing expert is employed in-house at the local authority or independent, their report should be clear, accessible and specific to ensure that the language and detail of the report can be easily understood by anyone who reads it. The reports must also identify outcomes and strategies for their achievement.

## *Vague and non-specific reports*

Unfortunately, a frequent concern raised by parents is that they are receiving vague, non-specific and generally unhelpful reports. Parents have reported that they suspected the wording of the reports has been cut and pasted from other cases and can, in the worst cases, be almost impossible to link to the child or young person in question. This is incredibly frustrating for the parent, who may have already fought extremely hard to have the child assessed or to have the report commissioned in the first place.

Where relevant experts work in-house at an LA or for a service it commissions, families often suspect that the expert may feel under pressure to avoid specification and quantification in their reports.

However, the professional standards set out above apply to all relevant professionals, all the time. There is no 'get out clause' which allows for vague, non-specific reports to be produced in certain circumstances.

## *What can parents do?*

Where such unlawful advice is given, parents or young people have a number of options for redress.

IPSEA have an amendable [model letter](#) () to complain when the EHC needs assessment has not been undertaken correctly.

This letter can be sent to the Director of Children's Services of your LA and may apply the required pressure to obtain a more detailed report. However, given how widespread this problem seems to be in our experience, there is no guarantee that this will be successful.

Secondly, should the parents or young person be able to afford it, it might be an option to commission a report from an expert entirely independent from the LA.

A report commissioned through the parents or young person directly allows for the instructions to mandate the required degree of specification and quantification in the advice, as well as a thorough identification of needs.

Unfortunately, such independent expert reports are expensive and the cost is beyond the reach of many parents or young people. Furthermore, even if an independent report is commissioned, there will likely be a further contest as to why one

report should be followed over another, particularly where one report's recommendations would cost significantly more money, and this dispute may result in an appeal to the Tribunal.

Where parents and young people have very limited funds, it may be possible to obtain funding via legal help to instruct independent experts. However, this requires the family to be able to take on the burden of a Tribunal appeal, which may well not have been necessary if lawful reports had been provided in the first place.

## Refer the professionals to their professional body

Another option, which does not seem to be frequently considered, is to refer the professional to their regulator (generally the HCPC as above).

Irrespective of who commissioned the report, it is important that the reputation of the profession is upheld and standards are maintained throughout the profession. Should the expert have failed in their professional duties, the regulator will investigate and ensure that they are subject to the appropriate sanctions. It seems to us that if more referrals were made in appropriate cases, this would put pressure on the relevant professionals to ensure that they are upholding the standard of professionalism required to assist children and young people appropriately.

For many parents and young people, the process of seeking and obtaining professional reports is daunting, stressful and time consuming. It is unacceptable that children are denied the support to which they are entitled.

If you have received a report and you are concerned that the expert has not fulfilled their professional duties and wish to refer them to their regulator, you can submit a referral on the [HCPC website](#) ([link](#)).

## About Emily

*Emily Chalk is a caseworker working in the Child Care department of Duncan Lewis Solicitors. She previously volunteered with the charity IPSEA and has a particular interest in SEND law and the legal intersection between looked after children and children with special educational needs. Emily has a first class degree in Philosophy from the University of Essex and a distinction in the Graduate Diploma in Law from the University of Law. An aspiring barrister, Emily is due to start the Bar Practice Course in September 2021".*

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## Steve Broach

Steve is a Barrister in public law and SEND parent hero. He has particular interest and expertise in health, education and social care, with a focus on disability and children's rights cases. Steve has successfully challenged a number of funding cuts to public services in recent cases including West Berkshire (short breaks for disabled children), and Bristol (special educational needs provision). His background is in policy and campaigning work with and for disabled children and adults and their families. Many of his cases involve the intersection between law, policy and politics.

Steve is co-author of *Disabled Children: A Legal Handbook* (Legal Action Group, Second Edition, 2016) and *Children in Need: Local Authority Support for Children and Families* (Legal Action Group, Second Edition, 2013).

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