

What makes a good EHC Plan?

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What are the key sources of law?



Education Act 1996	Children and Families Act 2014 ('CAFA')	'The SEND Regulations'	Statutory Guidance	Other Key Sources
Comprehensive framework governing education in E&W. [Link]	Established the EHC Plan system. [Link]	Special Educational Needs and Disability Regulations 2014	2015 Special Educational Needs and Disability Code of Practice: 0 to 25 ("the SEND Code of Practice")	Children's Wellbeing and Schools Act 2026
As relates to SEND - not completely replaced by CAFA 2014.	Sought to join up services.	Adds detail to CAFA provisions; tends to set out the process.	Expectation is that will be followed. Take care with interpreting 'guidance'.	Equality Act 2010
Relevance - questions of parental preference (Section I)	Extended scope of 'statements' (now EHC Plans) to post-16	SEND (First Tier Tribunal Recommendations Power) Regulations 2017	Explains how LAs, schools, and professionals should identify, support and meet the needs of CYP with SEN.	Tribunal Procedure Rules
(Specialist) School Transport still underpinned by EA 1996; Part IV – duties on LAs and on providers to support children w/SEND.	Rights of appeal are codified in the CAFA 2014	Relevant for 'extended appeals'	Intention: to help ensure consistent approach across the country.	Children Act 1989

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Key Principle (i) – 'Voice of the child'

- [Section 19, Children and Families Act 2014](#)
 - the local authority must have regard to the voice of the child and also ascertain and listen to the wishes and feelings of parents.
- Where possible the child/young person should participate in decisions and requests on provision.
- In reality it can sometimes be challenging to hear from the child directly.
- When dealing with SEN professionals should seek to empower the child/young person and seek to increase their agency.
- Co-operation and collaboration between public bodies – Courts take a dim view on squabbling public bodies.

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Key Principle (ii) – Mainstream Provision

- The CFA 2014 anticipated that most children and YP with SEN should have their needs met within local mainstream early year settings, schools or colleges without an EHC Plan.
- *If an EHC Plan is issued, specific educational entitlements open up that are not otherwise available to other children or YP.*
- The EHC Plan provides a certain amount of certainty and stability being of statutory status.
- The CFA 2014 changed the SEN landscape but perhaps not in the way intended => more change across the rest of this decade...

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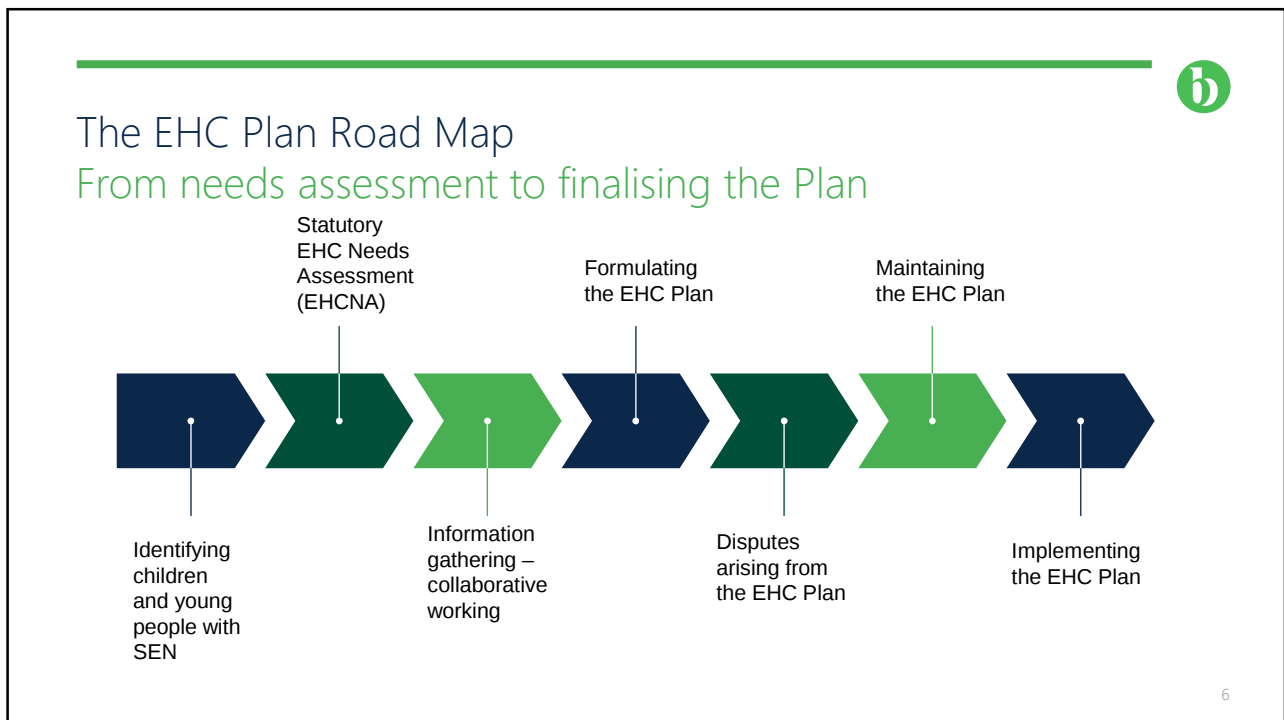


What is an EHC Plan?

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What is an Education, Health and Care (EHC) Plan?

- Defined under [Section 37 Children and Families Act 2014](#).
- An EHC Plan specifies the child's or young person's special educational needs and the **special educational provision** required... as well as, inter alia, any **health provision** and **social care provision** reasonably required by the learning difficulties and disabilities which result in the child or YP having SEN...
- Form is prescribed by law – 11 sections A to K.
 - [Regulation 12 of the Special Educational Needs and Disability Regulations 2014](#) and the [2015 SEND Code of Practice](#) (See in particular table at paragraph 9.69).
- Common misconceptions.

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What is an Education, Health and Care (EHC) Plan? (Supplementary Handout – please click image below)



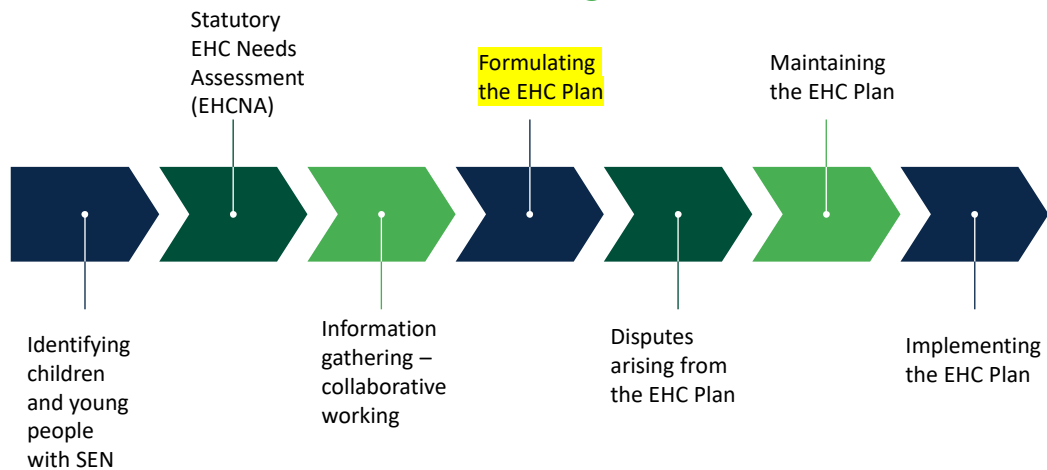
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The EHC Plan Road Map

From needs assessment to finalising the Plan



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The EHC Plan Journey – key considerations

- To assess or not to assess? LA decides but health may have a key contribution to make – indeed duty on health ‘to bring to LA’s attention’
- EHC Plan to be formulated – evidence?
- Role of ICB
 - Health contribution to relevant sections – process and formulation
- Barriers to the child accessing education because of health need?
- Blurring of lines: education vs health vs social care provision
- Mediation/Appeals
- Is there safeguarding to consider?

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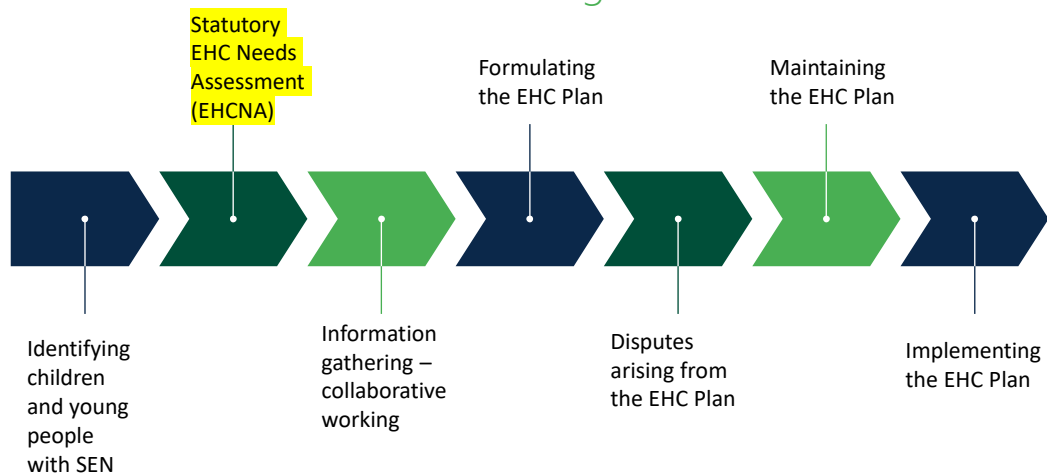
Who is eligible for an EHC Plan?

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The EHC Plan Road Map

From needs assessment to finalising the Plan



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36 Assessment of education, health and care needs

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(1) A request for a local authority in England to secure an EHC needs assessment for a child or young person may be made to the authority by the child's parent, the young person or a person acting on behalf of a school or post-16 institution.

(2) An "EHC needs assessment" is an assessment of the educational, health care and social care needs of a child or young person.

(3) When a request is made to a local authority under subsection (1), or a local authority otherwise becomes responsible for a child or young person, the authority must determine whether it may be necessary for special educational provision to be made for the child or young person in accordance with an EHC plan.

[...]

(8) The local authority must secure an EHC needs assessment for the child or young person if [...] the authority is of the opinion that—

(a) the child or young person has or may have special educational needs, and

(b) it may be necessary for special educational provision to be made for the child or young person in accordance with an EHC plan.

37 Education, health and care plans

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(1) Where, in the light of an EHC needs assessment, it is necessary for special educational provision to be made for a child or young person in accordance with an EHC plan—

(a) the local authority must secure that an EHC plan is prepared for the child or young person, and

(b) once an EHC plan has been prepared, it must maintain the plan.



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Formulating the EHC Plan

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Parameters of the EHCP

- These are plans that can continue to 25 if special needs persist and the young person remains in education and/or training.
- Local Authority leads* the process (social care and education are separate functions for the LA).
- Typical EHC Plan pathway takes 20 weeks.
 - Important it captures all needs and it must be comprehensive.
 - This is a tight timetable.
- Premise that education, social care and health all have a part to play – duty to cooperate - each have sections of the EHCP where needs and provision documented accurately and fully.
- Problems can arise when LA/health do not engage well; provision 'falls between'.
- Do not assume that things such as occupational therapy/physiotherapy and speech and language therapy at school are health provision– usually education (see next slide).

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Formulating the EHC Plan

- Specified.
- Quantified – for how long?
- Child/young person – centred.
- Detailed but not verbose.
 - (NB//don't forget about Section K – oft-overlooked section of the Plan.)

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Formulating and issuing an EHC Plan

- Responsibility of the Local Authority – once finalised all agreed provisions across the sections have a statutory basis so must be met.
- Has the parent/young person adduced private evidence?
- Has the LA scrutinised this?
- Rights to mediation and/or appeal become exercisable upon the Plan being finalised.
- Not the end of the matter – duty on the Local Authority to review the EHC Plan.
 - On at least an annual basis.
 - Every 3-6 months for pupils < 5 years.
 - Watch out for 'Phase Transfer' plans – prescribed deadlines.

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Formulating an EHC Plan – health considerations

- If health provision included no EHC Plan should be finalised until signed off by health.
- Ensure that sections C and G are agreed as the main sections for health.
- Wording must describe provision to be made accurately.
- There may be some health input into some other sections but this would be minimal.
- The case law around what constitutes health care into schools continues to evolve so seek legal advice if unsure.
- If the matter has been at appeal and a '[Regulation 5 recommendation](#)' is going to be issued by health then LA must not finalise the EHC Plan without first consulting the ICB.

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Don't forget about the dividing line between SEP and health/social care provision...

"Health care provision or social care provision which educates or trains a child or young person is to be treated as special educational provision (instead of health care provision or social care provision)." ([Section 21\(5\) Children and Families Act 2014](#))

- Effect: provision which might ordinarily be included in Section G of an EHC Plan – with responsibility for securing the provision resting with the ICB – is included in Section F, and it becomes the responsibility of the Local Authority to secure.
- There is no clear dividing line between education and health provisions; each provision is assessed on its own facts.
- Speech & Language Therapy and Occupational Therapy are the 'textbook examples' of deemed special educational provision.
- Equine-assisted learning and weekend trips are two examples of provision which (generally) are not special educational provision, but which a parent might seek to include in Section F.

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Collaboration is key (and expected!)

- Duty of collaboration for health and assessment key. Health must have designated staff and resource to effectively engage in EHCP process.
- EHC Plan – statutory footing and so be thoughtful on what provision is offered and agreed. Based on evidenced need not diagnosis.
- Families can insist on amending health related sections - work with families to set expectations early – seek to avoid extended appeals.
- ICB duties around SEN – leadership is essential and a requirement at executive level.

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Collaboration is key (and expected!)

- Where there are system/communication issues seniors in agencies should be speaking and navigating resolution.
- Provision can only be included in Section G with ICB's prior approval.
- This give an ICB an effective 'veto' over healthcare provision to be specified in an EHC Plan.
- Use of this veto should be 'approached with caution'.
 - Decisions must have process and rationale.
 - Consistency of approach important.
 - Inconsistent/irrational decision making by the ICB may subject to a public law challenge e.g. through Judicial Review.

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Discussion point

- Questions?
- How effective is communication between partners when EHC Plans are being formulated?
- How is collaboration achieved in your area?

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What helps to
make a good
EHC Plan?

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What makes a good EHC Plan?

- Specified.
- Quantified – for how long?
- Child/young person – centred.
- Detailed but not verbose.
 - (NB//don't forget about Section K – oft-overlooked section of the Plan.)

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What is the importance of specificity when considering special educational provision?

- [Regulation 12, Special Educational Needs and Disability Regulations 2014](#)

12.—(1) When preparing an EHC plan a local authority must set out—

[...]

(f) the special educational provision required by the child or young person (section F)

[...]

- [2015 SEND Code of Practice](#)

“The purpose of an EHC plan is to make special educational provision to meet the special educational needs of the child or young person, to secure the best possible outcomes for them across education, health and social care and, as they get older, prepare them for adulthood. To achieve this, local authorities use the information from the assessment to:

• [...]

• **specify the provision required** and how education, health and care services will work together to meet the child or young person's needs and support the achievement of the agreed outcomes.” (Paragraph 9.2, **emphasis** added.)

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What do we mean by specificity?

- Section F must be so specific and so clear that there is 'no room for doubt as to what has been decided is necessary in the individual case'.
 - [L v Clarke and Somerset County Council \[1998\] ELR 129](#)
- The contents of an EHC Plan have to be specific and quantified as is necessary and appropriate in any particular case or in any particular aspect of a case.
- But...the Plan needs to be a realistic and practical document – a living document that cannot be fixed in time.
 - [London Borough of Redbridge v HO \(SEN\) \[2020\] UKUT 323 \(AAC\)](#)
- When devising/revising all provision, can be helpful to think:
 - Who?
 - What?
 - Where?
 - When?

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Worcestershire County Council v SE [2020] UKUT 217 (AAC)

- 77 page judgment
- Analysis of c.25 years of case-law (authorities to which UT was referred) –
 - L v Clarke and Somerset [1998] ELR 129* – ‘the classic formulation’: ‘whether [a statement] is so specific and so clear as to leave no room for doubt as to what has been decided is necessary in the individual case’ [27].
 - BB v. Barnet London Borough Council [2019] UKUT 285 (AAC)*
 - ‘In distinguishing between cases where provision is sufficiently specific and those where it is not, it is important that the plan should not be counter-productive or hamper rather than help the provision that is appropriate for a child. The plan has to provide not just for the moment it is made but for the future as well.’**

Principles at [74] of the *Worcestershire CC v SE* decision

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Worcestershire County Council v SE [2020] UKUT 217 (AAC)

- I. 'Classic formulation' under *L v Clarke and Somerset* test still applies BUT
- II. **Specificity depends** on what is appropriate in the particular case; and
- III. **Can't be reviewed in the abstract.**
'A lack of particularity may allow less specific provision; a more detailed case may require more detailed provision.'
- IV. Specification in terms of **hours per week** 'not an absolute and universal precondition of the legality of any statement'
- V. **Duty to specify** $\neq$ **a requirement to 'specify'** (in the sense of identify or particularise) **every last detail** of the special educational provision to be made.'
- VI. A failure to specify a level of support after a particular date may lack the required degree of specificity.

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Worcestershire County Council v SE [2020] UKUT 217 (AAC)

- VII. provision cast in the form of **recommendations as opposed to requirements** **may lack the requisite degree of specificity** – 'programmes tailored to need'; 'opportunities' (also).

However

- VIII. **Some cases where flexibility should be retained** - degree of flexibility which is appropriate in specifying [SEP] is essentially a matter for the tribunal, considering all relevant factors.

And

- IX. EHCP has to **provide 'not just for the moment it is made, but for the future as well'**.
- X. EHCP contents have to be **as specific and quantified as is necessary and appropriate** in any particular (aspect of) a case $\Rightarrow$ emphasis on **the EHCP** being realistic and practical 'which in its nature **must allow for a balancing out and adjustment'**.
- XI. **Section I naming a special school/college is a relevant factor** - may in an appropriate case permit more flexibility than when a mainstream school is involved... 'Greater specificity might well be appropriate in the case of a mainstream school where staff have to be brought in, whereas in the context of a special school such staff may well in principle be available.'

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What makes a good EHC Plan?

- Specified – think 'Who/What/Where/When'.
- Quantified – frequency/duration.
- Child/young person – centered.
- Detailed but not verbose.
- Importance of the Annual Review process – not a mere 'tick box' exercise.

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How might this be improved?

AK should have intervention once a week for at least 1 hour or as advised by CAMHS with suggested strategies implemented across the school day by school staff for at least 10 minutes a day.

[London Borough of Redbridge v HO \(SEN\) \[2020\] UKUT 323 \(AAC\)](#)

[C] shall be taught and supported by staff with qualifications and relevant experience in supporting children with learning difficulties, specifically dyslexia as well as associated sensory, behavioural, developmental and communication and interaction difficulties.

-and-

[C] shall have 1 x 1 hr 1:1 support each week to facilitate and support work recommended by Speech and Language therapy on an individual basis and within the wider learning environment. This shall be subject to termly review.

[Worcestershire County Council v SE \[2020\] UKUT 217 \(AAC\)](#)

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Finalising the EHC Plan

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Finalising the EHC Plan

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- This is the duty of the LA – once finalised all provisions across the sections have a statutory basis so must be met.
- Wording must describe provision to be made accurately.
- If health provision included no EHC Plan should be finalised until approved off by health.
- NB//if the matter has been at appeal and a Regulation 6 response is going to issued by health then LA must not finalise the EHCP.
 - More on appeals in due course...
- Issuing a finalised EHCP $\neq$ the end of the journey; delivery of provision; the annual review cycle and/or legal challenge (appeals)

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Naming a setting in an EHC Plan

- Section I of a finalised EHC Plan must set out:

'- the name of the school, maintained nursery school, post-16 institution or other institution to be attended by the child or young person and the type of that institution or, where the name of a school or other institution is not specified in the EHC plan, the type of school or other institution to be attended by the child or young person (section I)' – Regulation 12(1)(i) Special Educational Needs and Disability Regulations 2014.

- Exception: EOTIS – Section I must be left blank (case law including [Derbyshire CC v EM and DM \[2019\]](#); [NN v Cheshire East Council \(SEN\) \[2021\]](#)).
- A draft EHC Plan must not name a specific institution or a type of institution – **Section 38(5) Children and Families Act 2014.**
 - NB//this applies to drafts of a first EHC Plan – reviews of EHC Plans following a different process. It will be expected that amendment notices set out the setting/type of setting to be named.
- When issuing a draft EHC Plan (first Plan) or a proposed amended EHC Plan (following review) – parent or young person must be informed of their right to request a particular school or other institution named in the EHC Plan.

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When can an EHC Plan be challenged?

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Legal Challenge

- Potential for legal challenge => throughout the EHC Plan journey – different methods at different times/in respect of different decisions.
- Most commonly – this will entail an application for Tribunal appeal and/or mediation => one of a range of 6 decisions relating to an EHC Plan –or- Needs Assessment.
- Judicial Review => different lens; not used for appeals re: EHC Plans themselves – delivery of EHC Plan provision (or failure to deliver) can be challenged through JR.
- JR alongside a Tribunal appeal?

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Dispute Resolution – what happens if the EHC Plan is not agreed by the parent/YP?

- Potential for legal challenge
- Most commonly – this will entail an application for Tribunal appeal and/or mediation
- May also be Judicial Review (more on that in future sessions.)

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Summary - what makes a good EHC Plan?

- Specified – think 'Who/What/Where/When'.
- Quantified – frequency/duration.
- Child/young person – centered.
- Detailed but not verbose.
- Importance of the Annual Review process – not a mere 'tick box' exercise.

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| Any questions?

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