

Reviews of Education, Health and Care plans: proposed timescales

Natspec consultation response

1 August 2022

Consultation question 1

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

Strongly Disagree.

As a matter of principle, we do not think government should disregard a High Court ruling by choosing to move the goal posts rather than addressing the underlying issue.

Our members report that local authorities routinely fail to make any updates to EHC Plans after annual review meetings, and rarely do so in a timely fashion. These failings result from a lack of staff capacity within local authorities and will not be addressed by simply extending the timeframe in which they must act. The High Court ruling that plans should be updated within a 4-week period brought a necessary sense of urgency to this important aspect of the SEND system. We would not like to see that undermined by government action to double this response time. Delays in updating plans result in extended time periods where children and young people are forced to go without support or interventions that have been deemed necessary for successful engagement in their education. They have a particularly negative impact in the context of transition reviews where children, young people and families are left in limbo while they wait to see if amendments agreed verbally ever make it into writing in the plan. Receiving schools, colleges or post-education providers also lack the definitive information to allow them to plan for the admission of the child or young person and put in place the necessary support, including recruiting specialist staff where appropriate. Young people frequently arrive at college with EHCPs that clearly have not been updated for years. One member has shared an example in which the young man's outcomes include, 'He must stay for school dinners.'

While we appreciate that the workload of local authority staff makes it difficult for them to update EHC Plans in a timely fashion, we do not think the solution is to extend timelines and delay necessary provision. Instead, local authorities need to review existing ways of working and also be appropriately resourced to allow them to keep on top of their SEND caseload, attend annual reviews, whether in person or remotely, and update EHC Plans promptly. Mandatory attendance at annual reviews would have a significant impact on local authorities' ability to follow up promptly.

Consultation question 2

Where an LA proposes to amend an EHC plan following a review meeting, to what extent do you agree or disagree that it should in any two stage procedure be required: (a) in the first stage, to issue a notice confirming the decision to propose amendments to the plan and the process and timescale for the procedure that must follow; and (b) in the second stage, to issue a notice of its proposals for the amendments and copies of any evidence which supports those amendments?

Strongly Disagree

There should be a working assumption that annual reviews are likely to result in changes to a child or young person's EHC Plan. Children's and young people's needs are likely to evolve over the course of a year; as they get older they may also become more able to contribute to the content of their plan. Either they will have made expected or better progress, perhaps prompting a reduction in support or the inclusion of more challenging outcomes, or they will have made less than expected progress, which would suggest some different interventions, forms of support or even a different placement may be needed. If revisions to EHC Plans are established as a normal part of reviews, it would be perverse to set up an 'exceptional' process to deal with plans that may need updating.

Adding an additional stage in the process is, in any case, likely to further delay the updating of the EHC Plan, which in turn will mean the child or young person waiting longer before they receive appropriate support or can access the right provision. Key information about the updates needed to the plan, as discussed at the review meeting, could be formally minuted as part of the annual review process; the actual updating should then follow within a four-week period.

Consultation question 3

Currently the advice and information gathered before a review meeting should be circulated at least two weeks in advance of that meeting. To what extent do you agree or disagree with our proposals that information should instead be circulated at least three weeks in advance of the review meeting?

Disagree [selecting 'neither agree nor disagree' meant there was no opportunity to provide a comment]

There is a risk that paperwork circulated three weeks before a review meeting (and hence probably gathered four or more weeks ahead, especially if the review falls after a school/college holiday) will already be out of date and hence provide an inaccurate picture of the child or young person's needs. However, currently, reviews are sometimes cancelled at the last minute because essential information has not been gathered; reports from health or care professionals are sometimes hastily pulled together at the last minute and lack the necessary detail to support good decision-making. Similarly, not all parties appear to have read background papers ahead of annual review meetings. A slightly longer period to review these may enable them to be better prepared. If circulation of background materials is set at three weeks in advance, government should make it absolutely clear that local authority representatives attending a review must have read them and considered in advance the implications for the child or young person and their EHC Plan.

Consultation question 4

To what extent do you agree or disagree that the proposals in this consultation would have a positive impact on those with particular 'protected characteristics' such as a disability and on children's rights?

Strongly Disagree

Children and young people with SEND would be less likely to have their rights met as a result of these proposals. They would be less likely to get timely and accurate support, for which government rightly advocates in its SEND and AP Green Paper. The solution is not to 'flex the system' for the convenience of local authorities at the expense of children and young people. Government needs to focus on ensuring LA compliance with existing requirements, through stronger accountability measures, and appropriate resourcing of LAs with ring-fenced funding for fulfilling their duties under the Children and Families and Equality Acts.

Consultation question 5

Is there anything else you would like to say about the proposals in this consultation?

Lack of LA staff capacity has led to a situation in which colleges are expected to lead, fund and resource annual reviews (which is the statutory duty of LAs rather than of colleges), for the most part, without any additional funding. Where LAs do not have the internal staff capacity to manage reviews, and delegate this responsibility to colleges, we would recommend that there is a contractual payment for this service.