

Please note: 'child' = 'child or young person'

What is a judicial review?

This is a legal process in which a court will look at how a public body, such as the local authority (LA), acted or made a decision, and say whether it did so in a **lawful, fair and reasonable way**. It does not look at whether it agrees with the decision, only the way in which the decision was made.

When a judicial review might be needed

A judicial review may be necessary where there is no other way to resolve an issue with the LA (or other public body). For a child with special educational needs (SEN), some of the reasons could be if (this is not exhaustive):

- A local authority (LA) has agreed to issue an EHC plan but doesn't actually issue the final plan, resulting in the child or young person missing special educational provision or schooling.
- The LA fails to secure the special educational provision set out in an EHC plan, resulting in the child or young person missing education.
- The LA has incorrectly or unreasonably decided to stop providing home to school transport to which a child or young person is entitled, meaning the child or young person cannot get to their place of learning.
- The LA fails to comply with a SEND Tribunal order.
- The governing body of a school refuses to admit a child or young person despite being named in the EHC plan (where there has been no formal exclusion).

Judicial review is only used where efforts to solve the issue with the LA (or other public body) haven't worked and there isn't another effective way of solving it. This means that where the LA's formal complaints procedure could realistically solve the issue, you need to follow this.

However, if this would not be realistic or an effective way of solving the issue you can go straight to Judicial Review instead (for example: if a child is out of school or not receiving the provision set out in their EHCP and the complaints process would be too slow, or the LA will not consider the evidence or law).

When judicial review might not appropriate

If the issue is about the contents of an EHC plan, then that should be dealt with by mediation and/or appeal to the SEND Tribunal. Even if you do not have the right to appeal, other avenues should be considered to resolve the issue(s), not judicial review.

For some issues, it may be more appropriate (or preferable) to complain to the LA and if necessary escalate the complaint to the [Local Government and Social Care Ombudsman](#) (LGSCO) instead. You will need to consider which is the most appropriate way of addressing the problem.

The stages of a judicial review

There are two stages to a judicial review. The first is the 'Pre-Action'. This is where a pre-action letter is sent to the LA (or public body). The second is the 'Action' stage, where you apply for permission to bring a judicial review to the court.

Do I need to have legal support?

Yes. Professional legal help should be obtained for both stages and it is strongly advisable to seek advice from a solicitor as soon as possible. This is particularly important as the Action stage (seeking permission) must be made as soon as possible and within three months maximum from the date of the matter being complained of, happening.

Can I have help with costs?

In cases relating to children or young people with SEN, generally the case will be about the child or young person's rights, rather than the parents'. For everything **after** the pre-action stage, legal aid can be sought in the name of the child or young person, based on **their** income, rather than the parent carer's.

You will need to consider that if you lose the judicial review, it is *possible* for the court to ask you to pay some or all of the costs (this is far less likely if you had the benefit of legal aid).

- You can check your eligibility or find a certified legal aid solicitor using the [GOV.UK Legal Aid Checker](#).
- IPSEA's [Where can I get help?](#) page about legal aid and finding a solicitor.

Further Information:

[Judicial review | \(IPSEA\) Independent Provider of Special Education Advice](#)

FAQs - [Can I seek judicial review? – SOS!SEN](#)

For free specialized guidance on child law and family court processes, visit the [Child Law Advice Service](#) run by Coram Children's Legal Centre.

[Lawstuff](#) (part of the Child Law Advice Service) providing Legal information for children and young people.



Service Statement

The role of the SENDIAS service is to ensure all parents, children and young people have access to impartial information, advice and support so they can make informed decisions related to their situation. Any information that is shared with the service is in confidence unless permission has been obtained to share this with any individuals, services and agencies that may be able to help in the circumstances. For more detail, view our [policies and privacy notice](#) on our website.

How to contact us: Tel: 0330 222 8555 / Email: send.ias@westsussex.gov.uk or cyp.sendias@westsussex.gov.uk (up to age 25) / Website: www.westsussexsendias.org

To view factsheet online and access all links: <https://tinyurl.com/btwbxzep>

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