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# Introduction

* 1. The Children and Families Act 2014[[1]](#footnote-1) requires Local Authorities (LA) and Clinical Commissioning Groups (CCGs) to have joint commissioning arrangements for education, health and care provision for children and young people with SEN and disabilities (SEND) aged 0 to 25. This includes joint commissioning of services at a strategic level and joint commissioning of arrangements for individual children with SEN and disabilities through the Education, Health and Care (EHC) assessment and planning process.
	2. ***This document covers joint arrangements for individual children and young people with SEND. Strategic joint commissioning agreements and planning for the local population of children and young people, including those with SEND is part of the work of the East Berkshire Joint Children’s Commissioning Board and is overseen by the Board.***
	3. The difference between ‘children’ and ‘young people’: A child is a person under compulsory school age, while a young person is over compulsory school age but under the age of 25. A person is no longer of compulsory school age after the last day of summer term during the year in which they become 16 (Section 83(2) of the Act).

1.4 This distinction is important because once a child becomes a young person they are entitled to take decisions in relation to the Act on their own behalf, rather than having their parents take the decisions for them. This is subject to a young person ‘having capacity’ to take a decision under the Mental Capacity Act 2005.

# Identification and referral to the Local Authority of children with SEND

* 1. The appropriate health professional will obtain parental consent prior to making the notification. Such notifications are not formal referrals nor are they (in themselves) a request to undertake an EHC Assessment. Each local offer will provide information on how to notify the Local Authority.
	2. Practitioners working for Solutions for Health, Berkshire Healthcare and FHFT must inform the Local Authority if they identify a child as having potential SEND.
	3. The Local Authority must be informed about children who are identified as having severe and complex needs, who may require services from the Authority. In these cases, it is likely to be the Paediatrician or GP who will make the notification. Notification should be sent to the appropriate Head of the SEND service.
	4. This information will allow the Local Authority to consider the need for a statutory EHC Assessment.
	5. Where there is a diagnosis of Hearing Impairment, Visual Impairment or Multi- Sensory Impairment, Solutions for Health, Berkshire Healthcare or FHFT must inform the Berkshire Sensory Consortium of the details of the child and young person and copy the notification to the home local authority in which the family lives.

# Children with SEND who do not meet the threshold for an Education, Health and Care (EHC) Plan

* 1. The majority of children with SEND will have their needs met through local services, including local mainstream schools, without the need for an EHC Plan. Schools and Colleges have resources allocated to them to meet the needs of children and young people with SEND.
	2. In meeting the needs of all children with SEND, with or without an EHC Plan, schools, colleges and early years settings seek support for a child with a health issue that affects the child’s or young person’s ability to learn. In the first instance, guidance should be sought through each area’s SEND Local Offer which includes a range of resources and toolkits.
	3. If specific advice from a health professional is required, schools, colleges or early years settings can either make referrals, with child and/or parental consent, or parents can gain access via the appropriate referral route.
	4. Where a child has a SEND, but does not have an EHC Plan, health professionals who are involved with the child will seek to support the school or educational setting through the provision of advice, which may include guidance on the creation of a Health Plan. Where gaps in commissioned provision are identified by health and NHS partners, the local authority or education setting, these will be drawn to the attention of the CCG. (See 5.14)

# Provision of information and advice to families / contribution to Local Offer website

* 1. The services which are available to children and young people with SEND aged 0 to 25 years are known collectively as the “Local Offer” or the “SEND Local Offer”. The Local Offer includes services provided by Education, Social Care, Health services and the voluntary and independent sectors.
	2. Local Authorities have a lead responsibility to ensure all of this information is available and easily accessible to parents and young people in one place. This must include a Local Offer website, although the information should also be made available in other ways too, such as helplines, leaflets and at public events. The content of the Local Offer website is prescribed by regulations and must include information such as how services are accessed, referral processes and eligibility criteria, as well as a description of services. Local authorities are reliant on partners in health to provide and keep up to date the relevant health information.
	3. Health organisations will provide any information which is reasonably required by the Local Authorities for the purposes of maintaining a Local Offer website which meets statutory requirements. This will include updating data to take account of any significant changes and also responding to routine requests to update data which will usually be made annually.
	4. Each of the Health Provider organisations will provide a named contact person with whom each Local Authority can liaise with in respect of Health information for the Local Offer. This individual will liaise with departments within their own organisation as necessary and will also promote the Local Offer with staff internally both as a resource for professionals and as a resource to which parents of children with SEND can be signposted.
	5. Each Local Authority has a SEND Information, Advice and Support Service (SENDIASS), providing impartial advice and support to parents of children with SEND and to the young people directly. This advice and information has to cover health and social care issues, in addition to SEN Education issues.

# Contributing to Education, Health and Care (EHC) Assessments

**Initiation of an EHC Assessment**

5.1 An educational setting such as a school, college or early years setting or a parent/carer, can make a formal request to the Local Authority for a statutory EHC Assessment to be initiated. A young person over statutory school age can also make such a request in their own right. On receipt of a request, the Local Authority will consider the evidence and will decide in line with the key tests as set out in the January 2015 SEND statutory Code of Practice whether an EHC Assessment is warranted.

5.2 Other professionals, such as Health professionals, cannot make a formal request for a statutory EHC Assessment, but they can draw a child or young person to the attention of the Local Authority. Any such notifications will be investigated by the Local Authority, but if an assessment is not started, the parents will have no right of appeal to the SEN & Disability Tribunal in these circumstances.

# Reports for EHC Assessments and timescales

# 5.3 Depending on the needs of the child or young person and the care they require a number of different professionals may need to be involved and contribute advice, these may include but not limited to Paediatrician, GP, Health Visitor, Community Children’s Nurse, Speech and Language Therapist, Physiotherapist, Occupational Therapist, Child and Adolescemt Mental Health Services (CAMHS), Community Health Service.

* 1. The CCGs through contractual arrangements with the NHS services they commission will ensure that the health providers provide reports by the relevant health professional(s) who are involved with the child’s care or who might have a potential role within statutory timescales (6 weeks following receipt of referral). This arrangement is also agreed directly between non NHS providers and the LAs, for example Solutions for Health and health teams across Achieving for Children.
	2. If the child is known to the service but the service has not undertaken an assessment of the child or young person ie the service has received a referral, then the service needs to decide whether the assessment can feasibly be undertaken within the timeframe without compromising the principles of fairness and equality to all children and young people on a waiting list. Where there are significant waits for an assessment it is reasonable for the health provider to provide some initial advice with fuller assessment taking place at a later date and for this to be communicated with the referrer.
	3. If the child is not known to the service the health professionals will need to make a decision on how to respond to the request and will need to satisfy themselves that the advice is being sought from other appropriate professionals so that the child or young person does not require their attention. Where a child is completely unknown to the service it may not be appropriate for an assessment to be undertaken or for advice to be provided beyond written notice to the LA that it is not possible to comply e.g. if a referral has been made to the wrong service or there is no evidence that a child or young person is suitable for a referral. In any case a response should be sent as soon as possible and within 6 weeks of the referral.
	4. Reports do not need to be written in a specific format. Reports should be written in a way that they can be readily understood by parents and other professionals, and they should also lend themselves to be included within an EHC Plan by detailing the child’s strengths, difficulties, their aspirations, the outcomes they need to achieve and the provision required meeting these SMART outcomes.
	5. As far as is reasonably practical, the health professional producing the report should liaise with other professionals involved in the EHC assessment, to ensure that those involved in assessing the child are working effectively together and to avoid duplication in assessments. In some circumstances it may be appropriate to undertake multi-professional assessments.
	6. Information about children and young people will be shared reflecting the General Data Protection Regulation (GDPR) and Data Protection Act 2018, and subject to the appropriate consents from parents and young people who are deemed competent.

# Attendance at EHC planning meetings

* 1. An EHC Assessment will usually include a person centred EHC Planning meeting involving the child/young person, parents/carers, the school or college and input from other relevant professionals involved with the child/young person. This meeting may be led by a Local Authority EHC Coordinator or by the school on behalf of the Local Authority. It is this meeting which will generate the EHC Plan.
	2. It is accepted that health professionals are not able to attend all such meetings and that clinical commitments will often have to take priority. However, in cases where a health professional has a particularly significant contribution to make to the development of the EHC Plan, their attendance is requested. For example, a speech and language therapist where the child’s primary need is a speech and language difficulty.

# Post 18 Assessments

5.10 Where health advice is needed for young people with SEND aged 18 to 25, and the child is not known to any health services, advice about where to access health information may be sought from the CCG’s Designated Clinical Officer (DCO) for SEND and from the CCG Head of Children’s and Young Person’s Commissioning.

# SEND Advisory Panels

5.11 Local Authorities will have multi-agency panels which make decisions about the EHC Plans. Health representation on such Panels will not usually be necessary, provided that there are clear and timely decision making processes in respect of Health resources in EHC Plans.

# Making decisions about Health provision in EHC Plans

5.12 CCGs have a duty under Section 3 of the NHS Act[[2]](#footnote-2) 2006 to arrange health care provision for the people for whom they are responsible to meet their reasonable health needs. Where health provision has been agreed in collaboration with the relevant health provider, health commissioners must ensure arrangements are in place to secure that provision.

* 1. Health professionals submitting reports for an EHC assessment will clearly state whether the health provision required by the child is available within existing commissioned resources within their report. Where this is the case, there will be agreement that the provision will be made by the relevant provider as part of existing commissioning arrangements.
	2. If a health provision is needed by a child and it is not available from within existing commissioned resources, the health professional concerned will indicate this within their report and will advise the CCG DCO and CCG Head of Children’s and Young Peoples commissioning. They will complete the CCG funding request form and accompany their application with a report from an NHS healthcare professional.
	3. The application must be anonymised and not contain any identifiable information except the child’s date of birth and NHS number. The Panel will consider the need for additional resources and will inform the LA and the provider trust of its decision within two weeks.
	4. If agreement cannot be reached between the LA and the CCG on responsibility for provision, or a reasonable split of funding, it may be necessary to refer the case for a decision by the Tripartite funding panel (see section 7).
	5. Should the health provision required for the child or young person be commissioned as part of Children’s Continuing Healthcare arrangements, a request will be made for funding through the Children’s Continuing Healthcare Panel via the Head of Continuing Healthcare and Placement governance.
	6. The dispute resolution process in respect of health provision which falls within Children’s Continuing Healthcare arrangements is different from the dispute resolution process for health provision which falls outside Children’s CHC arrangements.
	7. Where the CCG agrees to fund additional provision which is outside of their normal commissioning arrangements, this will be formally communicated to the LA Head of SEND.

* 1. Where Continuing Health Care (CHC) provision is agreed by the CHC Panel, the CHC service will be responsible for approving the Health contents of the EHC plan.

# Designated Clinical Officer (DCO) Role

* 1. The East of Berkshire CCG has appointed a Designated Clinical Officer (DCO), who is a suitable qualified health professional in accordance with section 3.48 of the Code of Practice: *“there is local flexibility for the role to be undertaken by a suitably competent qualified and experienced nurse or other health professional, in which case the role would be the Designated Clinical Officer”.*

6.2 According to the DCO/DMO handbook 2019[[3]](#footnote-3), their role is to provide:

* **Oversight** and assurance across all health services 0-25 delivering healthcare to children and young people with SEND.
* **Coordination and assurance** of strategic health’s input into the EHC process and reporting of health’s position and audits to quality committees.
* **Strategic** assurance re accountability of commissioners’ contribution to development of the joint commissioning and local area SEND strategies.
* **Championing** Co-Production as a way of working within and across health and as a signatory of a memorandum of understanding in support of local parent/carer forums.
* **Liaise** as required with colleagues and act as a point of contact for partners who are seeking health advice for children with SEND and there is a question about current or planned provision.

Also:

* **Receive** assurance that schools are receiving support as per commissioning arrangements with Berkshire Healthcare and FHFT with duties under ‘Supporting Pupils with Medical Conditions’[[4]](#footnote-4) guidance.
* **Receive** assurance that health reports are provided for Education, Health and Care Assessments within statutory timescales by way of regular quarterly compliance reports.
* **Receive** assurance that relevant and SMART Health provision in EHCPs is made by way of single agency quality assurance processes.

# Complex health and social care provision: Submissions to the Tripartite funding panel

7.1 In complex cases where there is insufficient clarity about Local Authority and health commissioning arrangements detailed within an EHC Plan, and the health provision being proposed does not fall into already commissioned services, the LA Head of Service for SEND should submit a joint LA and Health referral to the Tripartite panel for a joint commissioning agreement.

7.2 If any agreement fails to be reached, the matter will be referred to the respective Chief Executives of the CCG and LA as per Tripartite escalation process. The decision reached will be binding on all parties.

* 1. Disputes regarding Children and Adult Continuing Healthcare decisions are outlined in the CCG‟s Continuing Healthcare Operational Policy.

# Complaints, dispute resolution and mediation

* 1. The Children and Families Act 2014 makes a distinction between disagreement resolution arrangements and mediation.
	2. Local Authorities have a statutory duty to provide an independent mediation service for parents of children with SEND.
	3. The mediation arrangements are specifically linked to decisions about EHC needs assessments and plans. Disagreement resolution services can be used at any time, if both parties disagree, including while an EHC needs assessment is being conducted, while the plan is being drawn up, after the plan is finalised or while an appeal is going through the Tribunal process
	4. If parents or young people request, mediation can take place following decisions by a local authority:
* not to carry out an EHC needs assessment
* not to draw up an EHC plan
* after they receive a final EHC plan or amended plan
* following a decision not to amend an EHC plan or
* a decision to cease to maintain an EHC plan
	1. These mediation arrangements complement disagreement resolution arrangements. The disagreement resolution arrangements are designed to resolve disagreements about the performance of duties, SEN provision, disagreements over health and social care provision and disagreements between health commissioners and local authorities and are voluntary for both parties.
	2. The Children and Families Act 2014 sets out two pathways for going to mediation depending on whether the parent or young person wants to go to mediation about the matters which can be appealed to the Tribunal or whether they want to go to mediation about the health and social care elements of EHC plans.
	3. When the local authority sends the parent or young person notice of a decision which can be appealed to the Tribunal it must tell the parent or young person of their right to go to mediation and that they must contact a mediation adviser before registering an appeal with the Tribunal.
	4. The notice must give the contact details of a mediation adviser, contain the timescales for requesting mediation and the contact details of any person acting on behalf of the local authority who the parent or young person should contact if they wish to pursue mediation. The notice should also make clear that parents’ and young people’s right to appeal is not affected by entering into mediation.
	5. Parents and young people can also go to mediation about the health and social care elements of an EHC plan

**In either case, the CCG will ensure and receive assurance that relevant health professionals participate in the mediation process.**

* 1. If mediation is entirely about a health matter, the CCG will usually make its own arrangements for independent mediation, which must be compliant with the SEND Code of Practice 2015. Alternatively the CCG may ask the LA to arrange mediation through the LA’s arrangements, subject to the CCG paying the full cost of the mediation.
	2. Complaints which are specifically about Health provision will be dealt with by the relevant Health Trust through its usual complaints procedures.
1. **Appeals about SEND to the National Tribunal: National Trial – Single Route of Redress**
	1. The Government are trialing extending powers of the First-tier Tribunal (SEND) to make non-binding recommendations about the health and social care aspects of LA decisions regarding EHC plans as part of a special educational appeal. The trial applies to decisions made from 3 April 2018 and will run for two years.
	2. This trial will give parents and young people the ability to appeal associated health and social care issues via a single route.
	3. An evaluation process will run alongside the trial, looking at implementation, outcomes for families and commissioners and costsand will inform a decision on its continuation.
	4. Parents and young people have two months to register an SEN appeal with the Tribunal, from the date when the local authority sent the notice containing a decision which can be appealed or one month from the date of a certificate which has been issued following mediation or the parent or young person being given mediation information, whichever is the later.
	5. The Tribunal will not take account of the fact that mediation has taken place, or has not been taken up, nor will it take into account the outcome of any mediation. Parents and young people will not be disadvantaged at the Tribunal because they have chosen not to go to mediation.
	6. Parents and young people can appeal to the Tribunal about:
* a decision by a local authority not to carry out an EHC needs assessment or re-assessment
* a decision by a local authority that it is not necessary to issue an EHC plan following an assessment
* the description of a child or young person’s SEN specified in an EHC plan, the special educational provision specified, the school or other institution or type of school or other institution (such as a mainstream school/college) specified in the plan or that no school or other institution is specified
* an amendment to these elements of the EHC plan
* a decision by a local authority not to amend an EHC plan following a review or re-assessment
* a decision by a local authority to cease to maintain an EHC plan
	1. The Tribunal does not hear appeals about Personal Budgets.
	2. **Roles and Responsibilities**

**SEND Tribunal will have powers to:**

* Recommend that health or social care needs or provision are specified or amended in plans and must send a copy of the recommendation to health commissioners as well as the LA
* **LA SEND teams must:** Inform parents/young people of their new rights including through decision letters and the local offer, provide evidence to the Tribunal from the health and social care bodies in response to the issues raised within the timeframe set by the Tribunal, bringing additional witnesses to the hearing if necessary, and send the health and/or social care response to recommendation letter to the evaluators following any recommendation.
* **Health and social care commissioners must:** Respond to any request for information and evidence within the timeframe set by the Tribunal, send a representative to the hearing if required and respond to the family and the LA within 5 weeks of a recommendation being made setting out the steps they have decided to take or why they are not going to follow the recommendation.
* **Families may wish to:** Be clear about whether there is a health or social care issue, receive support through IASS and other organisations in preparation and engage with the evaluation

# Transition from Paediatric to Adult services

* 1. Appropriate health professionals involved with children with SEND should contribute to supporting key transition points, including transition to adulthood.

* 1. Each local authority will put in place a multi-agency Transition Protocol.

# Residential placements and in-patient admissions

* 1. Where a health commissioner or provider trust is considering making a placement that includes an education commitment, or impacts upon the child’s education, they will consult the Local Authority prior to making this decision. This might include, for example, in- patient admissions as a result of mental health issues. If a placement has to be made in an emergency, and there is no opportunity for consultation, the health commissioner or provider trust must place safely first and then will notify the Local Authority as soon as possible following the placement.
	2. Where a child with an EHC plan is admitted to hospital, and their stay has or is likely to exceed 6 days the community provider NHS trust or hospital NHS Trust will inform the appropriate Local Authority. The Local Authority will then consider what arrangements need to be made for the child’s education.
	3. Where a Local Authority has no alternative but to place a child outside of its own area, and the child has significant health needs, the Local Authority will consult with Health colleagues in the local area to satisfy itself that the child’s health needs can be met by local services in that area, and to ensure that any onward referrals are made where necessary.

# Monitoring and Review of this Agreement

* 1. This agreement will be reviewed and updated on a two yearly basis or sooner if required.

# Agreement

# This agreement has been reviewed by Slough and by Bracknell Forest Parent/Carer organisations.

* 1. This document has been agreed by the following organisations

**East Berkshire CCG**



Signed Date /10/2019

Designation Director of Strategy & Operations

**Berkshire Healthcare Foundation Trust (BHFT)**

Signed \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Designation\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Solutions for Health**

Signed\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Designation \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Achieving for Children**



Signed\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date \_\_\_\_\_\_\_02.10.19\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Designation \_\_\_\_Associate Director of Inclusion\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Frimley Park NHS Foundation Trust (FHFT)**

Signed \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Designation \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Bracknell Forest Borough Council**

Signed\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_25.10.19\_\_\_\_\_\_\_\_

Designation \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Assistant Director Education\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Slough Borough Council**



Signed\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date\_\_\_\_\_\_\_\_\_\_\_\_\_03.10.19\_\_\_\_\_\_\_\_\_\_\_

Designation \_\_\_\_\_\_\_\_\_\_\_Director Children, Learning & Skills\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Version: October 2019: Next Review: October 2021.





1. The Children and Families Act 2014

<http://www.legislation.gov.uk/ukpga/2014/6/pdfs/ukpga_20140006_en.pdf> [↑](#footnote-ref-1)
2. NHS Act 2006 <http://www.legislation.gov.uk/ukpga/2006/41/contents> [↑](#footnote-ref-2)
3. <https://councilfordisabledchildren.org.uk/our-work/health-and-wellbeing/practice/designated-medical-officer-designated-clinical-officer-resources> [↑](#footnote-ref-3)
4. Supporting Pupils with Medical Conditions” 2015 [https://www.gov.uk/government/uploads/system/uploads/attachment\_data/file/484418/supporting-pupils-](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/484418/supporting-pupils-at-school-with-medical-conditions.pdf) [at-school-with-medical-conditions.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/484418/supporting-pupils-at-school-with-medical-conditions.pdf) [↑](#footnote-ref-4)