

An update on ensuring good SEND governance (The W v Hertfordshire CC [2023] EWHC 3138 (Admin) litigation)

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1. Some of you may be aware of *W v Hertfordshire CC* [2023] EWHC 3138 (Admin) (8th December 2023). This case concerned a failure of a Local Authority to complete an assessment of whether a child had special educational needs (as was required by regulation 2 of the Special Educational Needs and Disability Regulations 2014). The background to this case was an acceptance by the Local Authority that it had “*made an erroneous decision in 86% of cases*” in 2021/2022 (§11). The Judge adjourned the Judicial Review claim for 28 days to allow the claimant to consider whether to amend his grounds and to pursue the unlawfulness challenge further (§37).
2. The case settled with Hertfordshire County Council agreeing to an Independent Review being commissioned to examine its Education and Health Care Needs Assessment Process.¹ That resulted in a 96-page report being produced on 2 July 2024. The report made 17 recommendations. Hertfordshire County Council have published plans to implement them by 27 August 2024. It notes that the strategy, and the success of the strategy against targets, will be reported to the Education, Libraries and Lifelong Learning (ELLL) committee by the end of January 2025 and be informed by the Education Psychologist Senior Leadership Team reviewing performance data monthly.²
3. This episode is an example of what can be achieved by strategic policy based Judicial Reviews. It is important work that helps guarantee good governance in accordance with the rule of law. There is some indication that the failure to properly consider Education Health and Care Needs Assessments is a national issue. A freedom of information request from Special Educational Needs Jungle disclosed that “*The national EHCNA refusal rate rose sharply in 2023: DfE data tells us for the last few years, LAs have*

¹ See <<https://www.hertfordshire.gov.uk/about-the-council/news/news-archive/independent-review-commissioned-to-examine-send-needs-assessment-decision-making>> accessed 6 May 2024 at 12.14pm.

² See <<https://www.hertfordshire.gov.uk/microsites/local-offer/feedback/improving-send/independent-review.aspx>> accessed 14 July 2024 at 5.14pm.

refused around 22% of the EHCNA requests they receive. In 2023, that figure appears to have gone up to 29%.”³ As such it seems probable that other Local Authorities are at risk of challenges similar to that brought against Hertfordshire County Council. Such Local Authorities would be well advised to ensure that thought is given to mitigating their vulnerability to such challenges.

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³ See < <https://www.specialneedsjungle.com/ehc-needs-assessments-2023-asking-snj-foi-data-not-parents/#:~:text=The%20findings%20here%20were%20depressing,have%20gone%20up%20to%2029%25>> accessed 14 July 2024 at 5.33pm.