Save Our Children's Rights
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An open letter to Prime Minister Andy Burnham and Education Secretary Lucy Powell: Scrap the cuts to SEND legal rights

Dear Prime Minister Andy Burnham and Secretary of State for Education Lucy Powell,

We are writing as disabled children and young people, parents, carers, educators, professionals, organisations and allies to ask you to change course on the Government's SEND reforms.

We reject the suggestion that England must choose between an inclusive education system and strong individual legal rights.

We support better training for teachers and school staff. We support earlier identification of need. We support investment in specialist expertise and a properly staffed workforce. We support making mainstream education genuinely more inclusive and accessible. We applaud your Government's desire to improve educational provision and outcomes.

None of those things requires the Government to weaken the legal rights of disabled children and young people.

Yet the SEND and EOTAS (Education Otherwise Than At/In School) reform proposals would do exactly that.

Taken together, the proposals contain at least **20 significant reductions in existing legal rights, protections and routes of challenge** for children and young people with special educational needs and disabilities (SEND).

They impact everything from how children qualify for statutory support, what can be written into an EHCP, who decides the provision delivered, where they are educated, how families can challenge poor decisions and whether children who cannot attend school can secure suitable education elsewhere. Our analysis sets the implications out in full.

The CFA 2014 placed children and families at the centre of decision-making. The current SEND and EOTAS reform proposals reverse this.

The proposed changes would replace hard-edged legal duties with discretionary ones in a system where families already struggle to access the specific provision children and young people require. The changes would remove or reduce most avenues for meaningful redress and accountability, something the Prime Minister is familiar with in his work on the Hillsborough Law.

That is why legal rights are so important.

Twenty ways existing SEND rights and protections would be reduced

Under the Government's proposals, children and families face changes to 20 key legal rights or expectations. The detail behind the headlines is included in the appendix:

1. The right to support based on a child or young person's individually assessed needs.
2. The right to have special educational provision specified in a legally enforceable EHC plan.
3. The right to ensure that the local authority secures every provision specified in an EHC plan.
4. The right to individualised provision, rather than provision being constrained by a standardised Specialist Provision Package.
5. The right for parents and young people to be consulted before provision and placement decisions are made.
6. The right to an EHC needs assessment based on individual need as set out in the current legal threshold.
7. The right to an EHCP without first meeting an undefined "complex needs" threshold.
8. The right to challenge inadequate descriptions of a child's needs and the provision in an EHCP as separate points.
9. The right to challenge decisions following an annual review, rather than waiting until the end of a Key Stage.
10. The right to request a particular school, college or other setting.
11. Loss of expectation that an EHC needs assessment should inform specialist provision before placement in an Inclusion Base.
12. Limit the right to appeal an unsuitable placement.
13. Loss of the Tribunal's power to name the setting a child needs.
14. The right to EOTAS when special educational provision in a school would be inappropriate.

15. The right to have bespoke EOTAS provision, rather than restricted to a Specialist Provision Package.
16. The right to meaningful parental involvement in choosing suitable EOTAS provision.
17. The right to appeal when EOTAS is refused.
18. The right to appeal when an agreed EOTAS provision is changed.
19. The right to appeal when EOTAS is removed.
20. The right to security of continued EOTAS provision for younger children when they reach secondary age.

Moving power from the people to the system

The Government describes its plans as "strengthening support and legal duties". We welcome the parts of the proposals that genuinely do so. But a single new right to an Individual Support Plan, with no guarantee of provision and limited accountability, cannot compensate for the loss of enforceable, individual provision and meaningful routes of appeal.

The clear facts are these: proposals for SEND and EOTAS reduce families' rights to choice and the ability to seek meaningful redress.

In short, these proposals are harmful. They assume a magical improvement in local authority decision-making, and remove existing accountability safeguards. They make unevidenced assumptions about schools', teachers', and support staff's capacity, availability of expertise, and ability to manage a far broader range of needs equitably.

Inclusion does not require fewer rights

To reiterate: There is no need for England's SEND system to choose between inclusive education and strong individual legal rights.

A well-resourced inclusive system should reduce the number of families who *need* to enforce their rights. It should not reduce their ability to do so when the system fails.

Even the best-designed national system will sometimes get individual decisions wrong. Resources come under pressure. Political will changes.

When that happens, a disabled child needs more than a promise that the system should work well. They need an enforceable right to appropriate provision, and an independent means of challenging a decision that is wrong.

And getting this wrong by removing hard fought and essential support will come at a huge cost to the country as well as individual children - parents will be unable to work, children will not reach their potential to go on to work and contribute, and many will need higher support longer term. Getting this right, with demonstrable outcomes will save money and most importantly ensure every child can thrive.

Lucy Powell has previously warned against weakening SEND law

Secretary of State, when you were a member of the Education Select Committee during its 2019 SEND inquiry, you were part of a committee that reached a very clear conclusion about the Children and Families Act 2014:

> *"We are confident that the 2014 reforms were the right ones. We believe that if the challenges within the system—including finance—are addressed, local authorities will be able to discharge their duties sufficiently."* — Education Committee, paragraph 17.

The Committee then made an even more pertinent recommendation:

> *"We recommend that when the Government makes changes to address these challenges, it should avoid the temptation to address the problems within the system by weakening or watering down duties or making fundamental changes to the law."* — Education Committee, paragraph 18.

That warning could have been written for the decisions now facing this Government.

The principal failures of the SEND system have never rested on families having too many legal rights. The evidence shows the problem has been implementation and funding.

Prime Minister, you now have a chance to change direction

Mr Burnham, Ms Powell, you inherited these proposals. Their final shape is now your responsibility. We have yet to hear any explanation of why reducing rights is necessary, or how it will improve outcomes for children and young people.

It is entirely possible to retain the positive elements of the reform programme while abandoning the parts that remove or dilute children's existing legal protections. We therefore ask the Government to:

1. **Retain existing SEND legal rights and independent routes of appeal, and abandon all proposals that would weaken them.**
2. **Retain the current legal threshold for a statutory assessment of needs.**

3. **Retain meaningful independent Tribunal oversight and decision-making power in respect of provision and placement.**
4. **Protect the existing legal right to EOTAS where education in a school is inappropriate and preserve rights of appeal over EOTAS decisions.**
5. **Scrap the proposals for Specialist Provision Packages; they are unworkable. Even with 20 packages, they still would not fit many children and would be a step back from the current individualised provision.**
6. **Ensure that National Inclusion Standards add capacity and consistency without becoming ceilings on individual provision.**
7. **Ensure the investment in inclusion, training, specialist expertise and workforce capacity has succeeded *before* expecting mainstream settings to absorb substantially greater levels of need.**
8. **Enforce existing statutory duties and improve accountability.**
9. **Work directly with SEND legal organisations to ensure a clear understanding of the risks, implications and unintended consequences of any legislative changes.**

Children and young people with SEND deserve the right to thrive. They should not have to surrender their existing legal rights to do so.

Yours sincerely,

The Save Our Children's Rights Coalition and attached signatories

Appendix 1

This is a list of legal rights or expectations that families face losing or having reduced under the proposals.

1. **The right to support based on a child or young person's individually assessed needs.**
   The Government proposes that eligibility for new EHCPs will depend on a child being assessed as requiring a nationally defined Specialist Provision Package (SPP). The statutory support in the EHCP would be drawn from these pre-defined packages, rather than individually specified according to all of that child's assessed needs. This fundamentally weakens the current right to individually specified and secured support.

2. **The right to have special educational provision specified in a legally enforceable EHC plan.**
   The provision currently set out in a legally enforceable EHCP would move to an Individual Support Plan (ISP). An ISP will not have appeal rights and cannot be enforced, only complained about. This framework allows the LA to select the SPP "category" and the school to decide how to deliver the chosen "educational offer".

3. **The right to ensure that the local authority secures every provision specified in an EHC plan.**
   The Government proposes to remove the LA's current absolute duty to secure the individualised provision set out in an EHCP. The plans replace this with duties to oversee how a school delivers support and spends its funding for the allocated SPP package.

4. **The right to individualised provision, rather than provision being constrained by a standardised Specialist Provision Package.**
   The bespoke nature of an EHCP would be replaced by an "off-the-peg" approach, using nationally defined packages for cohorts of children and young people. The LA-chosen package would determine the range of provision and placements available. But the detailed provision would be in the ISP, which the school can change with no parental Tribunal appeal possible.

5. **The right for parents and young people to be consulted before provision and placement decisions are made.**
   The Government proposes to weaken parents' and young people's right to participate before decisions are made, by allowing the LA to determine the Specialist Provision Package and placement before the EHCP is developed. The changes will not improve decision-making; they will make it harder to challenge poor decisions.

6. **The right to an EHC needs assessment based on individual need as set out in the current legal threshold**
   The Government proposes to change the current statutory threshold for an EHC needs assessment, an essential protection that has existed for around 30 years. This risks narrowing access to assessment, with a more limited scope for appeal.

7. **The right to an EHCP without first meeting an undefined "complex needs" threshold.**
   The proposals also narrow the right to an EHCP to children and young people with "severe and complex" needs. This is completely different from the current threshold, based on individual needs. There is still no standardised definition of "complex needs", let alone "severe and complex".

8. **The right to challenge inadequate descriptions of a child's needs and the provision in an EHCP as separate points**
   The Government proposes to remove the separate rights to appeal the

description of a child's SEN (Section B), and the provision (Section F) to meet those needs. The Government's plans will also restrict the grounds on which an appeal can be made.

9. **The right to challenge decisions following an annual review, rather than waiting until the end of a Key Stage.**
   Opportunities to appeal an annual review would be restricted for school-aged children to the end of key stages. As stated earlier, as the provision would be in the ISP, the school itself can alter it when it chooses, with no independent route of challenge by the parent/carer, besides a complaint to the same school's governing body.

10. **The right to request a particular school, college or other setting.**
    Parents' right to request a setting would be restricted to an LA's approved list of placements that can deliver its chosen package. The proposals mean parents and young people will have a more limited basis for requesting an *alternative* setting able to deliver the package.

11. **Loss of expectation that an EHC needs assessment should inform specialist provision before placement in an Inclusion Base**
    While not written in law, in practice, almost all pupils in a mainstream base already have an EHCP. As the plans downgrade "Inclusion Bases" to the "Targeted Plus" layer, schools can rotate pupils in and out when they wish without a full assessment of their needs. It risks routine placement in the wrong provision, or alongside others with vastly different needs.

12. **The right to appeal an unsuitable placement.**
    The Government plans to expand the grounds for refusal for a preferred placement, weakening the remedy against an unsuitable setting. This means if the LA decides the placement isn't "value for money," it can refuse the request without fear of a successful appeal.

13. **Loss of the Tribunal's power to name the setting a child needs.**
    The Government proposes to remove the SEND Tribunal's power to name a placement. Instead, it will only be permitted to direct the LA to "reconsider" the decision. This leaves families with no binding Tribunal remedy to secure the setting judged appropriate. What is "appropriate" would be decided based on a setting's ability to deliver the LA-allocated SPP and if it's deemed "value for money", rather than on the individual needs of the child or young person. It places the system at the centre, rather than the learner, the complete opposite of the intentions of the 2014 Children and Families Act.

14. **The right to EOTAS when special educational provision in a school would be inappropriate.**
    Currently, Education Otherwise Than At School (EOTAS) is for children with an EHCP, where education in a school/setting would be inappropriate. The plans narrow this to those assessed as having "severe and complex" needs, **and** where the LA/setting agrees they need EOTAS.

15. **The right to have bespoke EOTAS provision, rather than restricted to an SPP**
    EOTAS would depend on the child fitting an SPP category, instead of whether they can attend a setting. The LA names a category-based placement. The setting chooses the EOTAS provision, if any, and oversees its delivery and quality, regardless of its expertise to do so. Parents could face being forced to send their child into school or risk prosecution for non-attendance. New rules in the Children's Wellbeing and Schools Act prevent deregistration from a specialist school without the LA's permission.

16. **The right to meaningful parental involvement in choosing suitable EOTAS provision.**
    Linked to the previous point, the Government proposes to lessen parents' and young people's influence over suitable EOTAS provision by transferring management of the arrangements from the local authority to the named setting, which may or may not have the capacity or expertise to do so.

17. **The right to appeal when EOTAS is refused**
    The proposals remove the family's right to appeal when the LA (or selected school) does not agree that a child needs provision outside of a formal setting. It is a devastating loss for parents, as EOTAS is often only secured via appeal.

18. **The right to appeal when an agreed EOTAS provision is changed.**
    If the LA or school decides to change the agreed out-of-school provision at any time, the family will not be able to appeal. Presumably, this is because the day-to-day provision is now in the ISP, which has no appeal rights. The setting can change provision when it wants. Only the SPP category itself is appealable.

19. **The right to appeal when EOTAS is removed.**
    The plans also scrap the right to appeal a decision to cease EOTAS, leaving only a complaints process. So, even if a family is approved for EOTAS and the named setting organises it, it can be removed at any time. The family has no redress route other than a complaint or an expensive disability discrimination case. The parents must then make the child attend or face prosecution.

20. **The right to security of continued EOTAS provision for younger children when they reach secondary age.**
    These plans would commence from 2030, meaning younger primary children with EOTAS face compulsory reassessment at the end of KS2. This would remove continuity and security and increase stress at the prospect that they will lose the provision they have likely fought for.