

Freedom of Information – Response – 26990

Thank you for your response to reference 26916.

I am writing to make a further request for recorded information under the Freedom of Information Act 2000 in order to clarify the governance and legal status of the SEND decision-making panel(s) referenced.

Please provide the following:

1. Delegated Authority

a) Please confirm whether the SEND decision-making panel itself constitutes the formal decision-maker for the purposes of:

- Section 36 Children and Families Act 2014 (decision whether to secure an EHC needs assessment)*
- Section 39 Children and Families Act 2014 (naming of placement)*

SEND Panels operate in accordance with the governance arrangements set out in the SEND Panel Terms of Reference which can be found here: [send-decision-making-panel-terms-of-reference](#)

Please note however that Suffolk County Council does not hold specific information where it references Section 36 and Section 39 of the Children and Families Act

The relevant SEND Panels act as the local authority's decision-making mechanism, exercising delegated authority under the Suffolk SEND Scheme of Delegation.

These decisions are taken on behalf of the local authority by officers who hold delegated authority and who sit as members and Chairs of the relevant Panels.

b) If the panel does not constitute the formal decision-maker, please confirm:

- The job title of the officer who holds delegated authority to make the final statutory decision*
- The specific provision within the Council's Constitution or Scheme of Delegation under which that authority is conferred*

Please provide a copy of the relevant section(s) relied upon.

N/A

2. Legal Status of Panel Decisions

a) Are panel decisions binding, or are they recommendations to an officer with delegated authority?

Decisions taken by SEND Panels constitute the local authority's statutory decisions, where those decisions fall within the delegated authority held by the Panel Chair. Panels operate with defined core membership as set out in the SEND Panel Terms of Reference.

Decisions are reached through professional discussion and, wherever possible, consensus. Where consensus cannot be reached, the Panel Chair determines the decision in line with the delegated authority they hold.

Where a proposed decision would exceed the Chair's delegated financial authority, the Panel records a recommendation which is escalated in accordance with the Council's Scheme of Delegation and financial governance arrangements.

All decisions and recommendations are made on a case-by-case basis, taking account of the individual circumstances of the child or young person and the LA's statutory duties.

b) If recommendations, please confirm whether the delegated officer has the authority to depart from panel recommendations and whether this has occurred within the last three years.

N/A

3. Governance Controls

In your previous response, "N/A" was provided in relation to quorum rules and voting procedures.

Please confirm explicitly:

- *Whether quorum requirements exist for SEND panels - Yes*
- *Whether voting procedures exist - No*
- *If neither exist, please confirm whether decisions are made by consensus, chair's determination, or another method – N/A*

If recorded in any document, please provide copies. – This is not recorded in any document

4. Decision Records and Action Logs

You confirmed that panels do not produce minutes and that outcomes are recorded in action logs retained for two years.

Please provide:

a) A redacted example of an action log entry recording a panel decision (with all personal data removed).

All information released in response to a Freedom of Information Act 2000 (FOIA) request is deemed to be in the public domain. As such we must consider whether or not the requested information qualifies as personal information and should therefore not be released into the public domain.

The council has determined that this is personal information and is therefore exempt from disclosure under **section 40** of the FOIA. Due to the nature of a panel decision relating directly to an individual and being specific to them there is no way in which Suffolk County Council would be able to redact and entry log recording a panel decision so that it could be provided in a meaningful way.

The Council considered the following, including the possible consequences of disclosure for the data subjects concerned and their reasonable expectations as to the use of their data:

- expectations of the individuals concerned about personal information being put into the public domain;
- reasonable expectations - the data subjects concerned would have a legitimate expectation of privacy concerning their personal information and would not have anticipated this being put into the public domain;
- whether or not the requested information could be anonymised; and
- balancing the individual's rights and the legitimate interests - In past cases the Information Commissioner has weighed the individual's rights to privacy against the

public interest in disclosure. There is no presumption in favour of releasing personal data.

This is an absolute exemption, which means that if the condition is satisfied there is no additional public interest test to consider.

In assessing fairness, the Council considered the likely consequences of disclosure of the requested information. Personal information should not be used in ways that have unjustified adverse effects on the individuals concerned. The council also considered whether such disclosure would be within the reasonable expectations of the individuals, given that any response to a request under the FOIA is deemed to be in the public domain. The council believes that in this instance it is not fair to disclose personal data and is therefore withholding the requested information under section 40 of the FOIA.

b) *Confirmation of whether action logs record:*

- *The reasoning underpinning decisions - Yes*
- *Cost comparisons considered - Yes*
- *Any disagreement between panel members – No*

5. Retention

Please provide:

a) *The specific retention schedule relied upon for the two-year retention period referenced.*

SEND Panels follow Suffolk County Council's privacy notices on retention of data.

[Privacy notice - Suffolk County Council](#)

b) *Confirmation of whether destruction after two years applies to all panel decision records relating to EHC assessments and placement determinations.*

Yes panel decision records are deleted after 2 years. However, decisions the panel has made are recorded on the child or young person's individual SEND case record.

6. Cost Consideration

You stated that, after suitability is established, panels may consider "value for money".

Please confirm:

a) *Whether any written guidance, framework, or internal policy defines how "value for money" is assessed in SEND panel decisions.*

b) *Whether cost comparison matrices, benchmarking tools, or financial thresholds are used.*

c) *If such documents exist, please provide copies.*

Whilst no documents exist Suffolk County Council can confirm that SEND Panels consider the whole picture for the child or young person when making decisions. This includes consideration of identified need, the suitability and availability of provision, and the practical implications of proposed options.

Cost is considered as one factor among several, alongside:

- the child or young person's identified needs;
- the suitability of provision to meet those needs;
- what provision is available or on offer;
- distance from home; and
- associated transport requirements.

Where more than one suitable option is available, Panels may consider the overall cost of different options, including both placement and transport costs, in order to understand the cumulative financial impact.

Panels may consider projected costs over an appropriate planning period, such as to the end of a key stage, to support responsible and sustainable decision-making.

Decisions are not made on the basis of cost alone. Cost considerations do not override the requirement to secure suitable provision that meets the child or young person's assessed needs, in accordance with the Children and Families Act 2014 and the SEND Code of Practice.