



# *Education Exceptional Case Funding* School Inclusion Project training

Ollie Persey

10<sup>th</sup> November 2021



GARDEN COURT CHAMBERS



@gardencourtlaw

# ECF

---

- Section 10 LASPO
- Needed to avoid breach or risk of breach of ECHR rights.
- Typically you are considering Article 6 ECHR (the right to a fair hearing) and whether being without legal representation will prevent the client/applicant from being able to meaningfully and effectively take part in proceedings. Article 8 may also be engaged.



# Considering a breach of ECHR rights

---

Assessing whether a case engaging Convention rights requires funding is effectively a three-way balancing act. The factors which need to be addressed are:

1. The legal, factual and procedural complexity of the matter;
2. The importance of what is at stake; and
3. The ability of the applicant to represent themselves without legal assistance.

Note that ECF cases must still meet the usual legal aid means and merits criteria.



# Education

---

- The Lord Chancellor's Guidance on ECF says the following about education:

53. Education claims involving substantive civil law remedies determined in the civil courts (such as breach of contract or tort) will generally involve determination of civil rights and obligations.

54. A decision of an Independent School Appeal Board to permanently exclude a pupil does not involve the determination of civil rights and obligations (*R (V) v The Independent Appeal Panel for Tom Hood School* [2010] EWCA Civ 142)



# Education

---

- Lack of guidance on SEND appeals
- Unhelpful/wrong guidance on exclusions- see JCHR report re Article 6 ECHR  
<https://publications.parliament.uk/pa/jt201012/jtselect/jtrights/154/15404.htm>
- Slow processing times forces representative to act at risk; experts often cannot attend.
- LAA increasingly obstructive- repeated requests for documents.



# Practicalities – how to apply

---

- Non-lawyers can apply – use the paper CIV ECF1 form. Once the certificate obtained the case can be referred to a solicitor.
- Legal aid providers can use CCMS.
- Apply ASAP – even the ‘urgent’ procedure will take up to 10 working days.



# Resources

---

- Public Law Project guides
- Legal Aid Handbook
- *Gudanaviciene* [2014] EWCA Civ 162 - worth reading in full
- Lord Chancellor's Guidance
- Provider Pack
- <https://www.gov.uk/government/publications/legal-aid-exceptional-case-funding-form-and-guidance>





---

Good luck  
Any questions?

[oliverp@gclaw.co.uk](mailto:oliverp@gclaw.co.uk)



# Thank you

020 7993 7600

info@gclaw.co.uk

@gardencourtlaw



GARDEN COURT CHAMBERS

---