

PRESS RELEASE

JUSTIFY FOUNDATION — Registered charity 1188873

FOR IMMEDIATE RELEASE

Hertfordshire's SEND "star chamber": the secret panel that decides children's school places is told to delete its own records — against the Council's own retention policy

Panel papers "deleted in line with GDPR" after every meeting, says Council's own rulebook. Council's published retention schedule says such records must be kept for 35 years. In 2012 the Council told the public that panel decisions and reasons were recorded and available to parents on request. Justify demands answers under the Freedom of Information Act.

Hitchin, Hertfordshire. The Justify Foundation has written to Hertfordshire County Council under the Freedom of Information Act demanding urgent clarification of how the Council's SEND Provision and Placement Panel — the body that decides whether a child with an Education, Health and Care plan gets a specialist school place — keeps, or destroys, the records of its decisions.

The Panel's own Terms of Reference, adopted in April 2024, describe the Panel as the place "where a decision is made", give its chair "the final decision", and direct that the papers considered at each meeting are "deleted in line with GDPR" after the meeting has ended.

That instruction contradicts the Council's own published records policy, and Justify's analysis, published today alongside the request, concludes that data-protection law does not require any such thing.

The Council's own policy says 35 years

Hertfordshire County Council's published Retention and Disposal Schedule requires records of "assessing and providing individual support for children who have need of additional educational support" to be kept for **35 years from the child's date of birth**. It also states that once litigation or a Freedom of Information request concerning a record has been received, that record "must not be amended or disposed of".

Nick Whiteley, founder of the Justify Foundation, said:

"You cannot have a body that 'makes the final decision' about a child's education and then shred the papers on the way out of the room. The Council's own retention schedule says these records are to be kept for thirty-five years. Somebody wrote 'deleted in line with GDPR' into a governance document, and we want to know who, when, on what advice, and whether anybody checked it against the policy the Council already had."

What the law actually says

The UK GDPR does not set time limits for keeping records. Its storage-limitation principle allows personal data to be kept for as long as it is needed for the purpose for which it is held. The right to erasure is expressly disapplied where records are needed for a public authority's statutory functions and "for the establishment, exercise or defence of legal claims" (UK GDPR, article 17(3)(b) and (e)). The Information Commissioner's own guidance tells organisations they "should consider whether you need to keep information to defend possible future legal claims."

Every Panel decision about a child's school placement carries a statutory right of appeal to the SEND Tribunal and may be reviewed by the Local Government Ombudsman or the courts. The record of how and why the decision was reached is exactly the record the law expects a public body to keep. GDPR is being used as a shield: the law does not require these records to be destroyed — it requires them to be kept.

The Council's own words: "the Panel makes a decision"

The Council has said in public what its Terms of Reference say in private. Its *Admissions and Exit Guidance to Specialist Provision* (May 2023), published on the Local Offer, states: "The Panel makes a decision on the type of placement that is suitable for the child or young person's age, aptitude, ability and SEN and identifies the specific setting that is appropriate for them." The Local Offer page *Requesting a place in specialist provision* tells parents that "the SEND provision and placement panel considers every request on an individual basis", that "the panel will make a decision on the type of provision which will best meet the needs of your child", and that the EHC Co-ordinator "will give you reasons for the decision".

A promise to give reasons presupposes that reasons are recorded somewhere.

In 2012 the Council said the records existed and parents could see them

In January 2012, answering a Freedom of Information request, Hertfordshire County Council stated: "The decisions for both the SEN Assessment Panel and SEN Provision Panel are recorded, however, the meetings are not minuted. This recording includes reasons for each decision. This information is available to parents/service users upon request."

Fourteen years later, a parent supported by Justify who asked the Council for information about how the Panel had considered their child's case was told that "the LA has to consider GDPR and there will be discussion on many requests and for different children, therefore no recordings are made and there is no access to these."

Nick Whiteley said:

"In 2012 the Council told the public that panel decisions and reasons were recorded and that parents could ask to see them. In 2026 it tells a parent that nothing is recorded and nothing can be seen. Something changed, and nobody has explained what, when, or why."

"No recordings are made and there is no access"

Justify says the Council's 2026 answer raises a more troubling question than the one it was meant to close down. The Council's own Local Offer page promises that every request is considered "on an

individual basis". Its explanation for keeping no record is that "many requests and... different children" are discussed at the same meeting.

Nick Whiteley said:

"Read that sentence carefully. The Council is saying that because several children are discussed at the same meeting, nothing can be recorded and nothing can be seen. The law requires each child's needs to be assessed individually, and the Council's own website promises exactly that. If children are being considered as a group — against each other, in the same discussion, competing for the same limited places — then the absence of a record is not a data-protection precaution. It is the absence of any evidence that the individual assessment the law requires ever took place. Parents are entitled to ask whether their child's needs are being weighed on their own merits or pitted against another family's."

Why this matters now

Hertfordshire has spent two and a half years under formal intervention for its SEND services. A joint Ofsted/CQC inspection in 2023 found "widespread and/or systemic failings"; a Department for Education Improvement Notice followed in January 2024 and was lifted only in April 2026. Throughout that period the Council reported improving figures for the number of plans issued on time.

Justify's concern is that the figures measure the issuing of a document, not the making of a decision — and that the decision itself is being taken in a room from which no record survives.

Nick Whiteley said:

"A panel that operates without minutes, without reasons, without records, and without any right of access is a star chamber in all but name — and unlike the original, this one is instructed to destroy its own papers. Parents in Hertfordshire have been asked to trust that the system has been fixed. A process that deletes the evidence of its own decisions can only lead to further mistrust. We are asking the Council to publish the policy, explain how it came about, say whether it has actually been operated, and confirm that all Panel records are now being preserved."

What Justify is asking for

Justify's Freedom of Information request, sent today, asks the Council to disclose:

- every version of the Panel's Terms of Reference since 2022, and who approved them;
- when and why the "deleted in line with GDPR" instruction was introduced, and whether the Council's Data Protection Officer, Legal Services or Records Management function were consulted;
- when and why the practice described by the Council in January 2012 — decisions and reasons recorded and available to parents on request — was changed;
- what is actually deleted after each meeting and what, if anything, is retained;

- which entry in the Council's Retention and Disposal Schedule the Council says governs Panel records, and whether anyone has considered the conflict between the two documents;
- whether any legal hold has been placed on Panel records since January 2026; and
- how a parent, the Tribunal or the Ombudsman is expected to examine a decision whose papers have been destroyed.

The Council has 20 working days to respond.

ENDS

Notes to editors

1. The Justify Foundation (registered charity 1188873) provides advocacy and support to families in public law, family justice and special educational needs matters. Contact: pr@justifyfoundation.org
2. The Provision and Placement Panel Terms of Reference (April 2024) were obtained by Justify in July 2026 and are available to journalists on request. The Freedom of Information request and Justify's legal analysis of the "deleted in line with GDPR" provision are also available on request.
3. The Council statement quoted above was made in writing in response to a request for information by a parent supported by Justify.
4. "Star chamber": the Court of Star Chamber, abolished by Parliament in 1641, has given its name to any tribunal "resembling the Star Chamber especially in being secretive or arbitrary" (Merriam-Webster Legal Dictionary). The term is used in this release as Justify's characterisation of a panel that sits in private, keeps no minutes, gives no access to its papers and is instructed to delete them.
5. Sources: UK GDPR art 5(1)(e) and art 17(3) legislation.gov.uk; ICO, Principle (e): Storage limitation ico.org.uk; Hertfordshire County Council, Retention & Disposal Schedule v3.1 (14 March 2019), entry HCC 3.9 hertfordshire.gov.uk; Hertfordshire County Council, Admissions and Exit Guidance to Specialist Provision V2 (May 2023) [Local Offer PDF](#); Hertfordshire County Council, Requesting a place in specialist provision [Local Offer page](#); Hertfordshire County Council FOI response ref FOI/CSF/12/11/3929 (9 January 2012) whatdotheyknow.com; Lord Chancellor's Code of Practice on records management under s 46 FOIA (2021) gov.uk; Administrative Justice Council, SEND: Improving Local Authority Decision-Making judiciary.uk ("families feel in the dark about how the LA panel made its decision").
6. Justify wrote to all 78 Members of Hertfordshire County Council on 7 September 2026 asking for an investigation, independent of the SEND service, into the practice of finalising EHC plans with a placeholder entry in Section I while the placement decision is deferred to the Panel.

Background: Hertfordshire SEND — a timeline

April 2026 — The Department for Education lifts the Improvement Notice on Hertfordshire's SEND services following a monitoring inspection. The Council reports 92% of new EHC plans issued within 20 weeks in the final quarter of 2025 and a backlog reduced from 606 children to four.

March 2026 — The Council's Chief Executive writes to a Hertfordshire MP acknowledging that "mainstream" was entered in a child's plan to meet the statutory deadline while the specialist question awaited the Panel, and apologises.

December 2025 — Ofsted and the CQC publish the monitoring inspection letter (visit 20–22 October 2025) finding the local area has "taken effective action" on both priority actions, while recording continuing geographical inequity, long neurodevelopmental waits and "unacceptable delays in accessing audiology assessments".

August 2025 — DfE data shows the Council missed its own milestone of 60% of plans issued within 20 weeks by April 2025, recording 56.3% for 2024.

August 2024 — The Council announces a "new model" for Placement and Provision panels, launched in June 2024: four area panels meeting fortnightly, each chaired by a SEND Panel Manager, with a target of "no more than 30 days from request" for parents awaiting a decision.

July 2024 — Independent review by Leon Glenister of the Council's EHC needs assessment process makes 17 recommendations, noting an 88% concession/overturn rate on refusal-to-assess appeals in 2022/23.

April 2024 — The Provision and Placement Panel Terms of Reference are adopted, describing the Panel as "where a decision is made" and directing that papers be "deleted in line with GDPR" after each meeting. In the same month a Council officer writes to a parent that "once [the child's] case has been seen at panel, if it is agreed that a specialist provision is the most suitable place for her then she will be added to the referral list for the school panel have decided".

January 2024 — The Department for Education issues a formal Improvement Notice to Hertfordshire County Council.

December 2023 — The High Court holds in *R (W) v Hertfordshire County Council* [2023] EWHC 3138 (Admin) that the Council acted unlawfully in failing to finalise an EHC plan within the statutory period, noting that only 38% of Hertfordshire plans were then issued on time and that resource shortages are no defence to a hard-edged statutory duty.

November 2023 — Ofsted and the CQC publish the Area SEND inspection report (visit July 2023) finding "widespread and/or systemic failings leading to significant concerns about the experiences and outcomes of children and young people with special educational needs and/or disabilities". Only 9% of annual reviews were on time and only 5% of audited plans were good or outstanding.

2022 — 32.6% of new Hertfordshire EHC plans issued within the 20-week statutory limit, against an England average of 49.2%.

January 2012 — In response to a Freedom of Information request, the Council states that SEN Provision Panel decisions "are recorded... This recording includes reasons for each decision. This information is available to parents/service users upon request."