

# 11KBW

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## EHCPS for 19-25 year olds

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# The issue

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extension to 19-  
25y.o.s

overlap with ASC

19-25y.o.s with LD in care homes

Qs: Are they within the jurisdiction of the FTT?

Is all social care for most / all 19-25y.o.s now  
the responsibility of ed depts. & subject to  
merits appeal to FTT?

# Typical example

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19/20yo severe LD, non-verbal, P-levels

high level support in self-care tasks and  
personal hygiene

moved from sp school to care home  
care home assists life skills, has OT, SLT

# Legislation

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## Children and Families Act 2014

**section 37: when need to make an EHCP**

- “Where ... it is necessary for special ed provision to be made ...”

**section 21: “*Special ed provision*” ... means ed or training provision that is additional to, or different from, that made generally for others of the same age in— (a) mainstream schools in England ... [or] mainstream post-16 institutions in England ...”**

# *Bucks CC v SJ* [2016] UKUT 0254 (AAC)

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-19/20y.o.

-v low cognitive ability

-been in special schools through ed

slow progress throughout his ed

-functioning at P4-7 level

-equivalent to a pre-school child

# *Bucks v SJ* facts (ctd)

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- LA placed in care home
- care home gave life skills programme, literacy, practical numeracy, support with communication, indep living skills, cooking, cleaning etc
- care home had all therapies on site
  
- LA assessed then decided to not make EHCP – not “necessary”
- FTT directed LA to issue an EHCP: 2 bases
  
- Council appealed to UT

# *Bucks v SJ* – Upper Tribunal

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Upper Tribunal held –

not necessary to show he would attain qualification

2 reasons mentioned re why EHCP “necessary”

## **[1] belief that he could make progress**

“Ryan's parents believed that he could learn more if appropriate provision were made. They based that on what they had seen when Ryan was at his last school; there was evidence that his teachers there had been of the same opinion”

# *Bucks v SJ* – Upper Tribunal (ctd)

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**[2] therapies** – no dispute that needed, issue was whether in ed or care environment

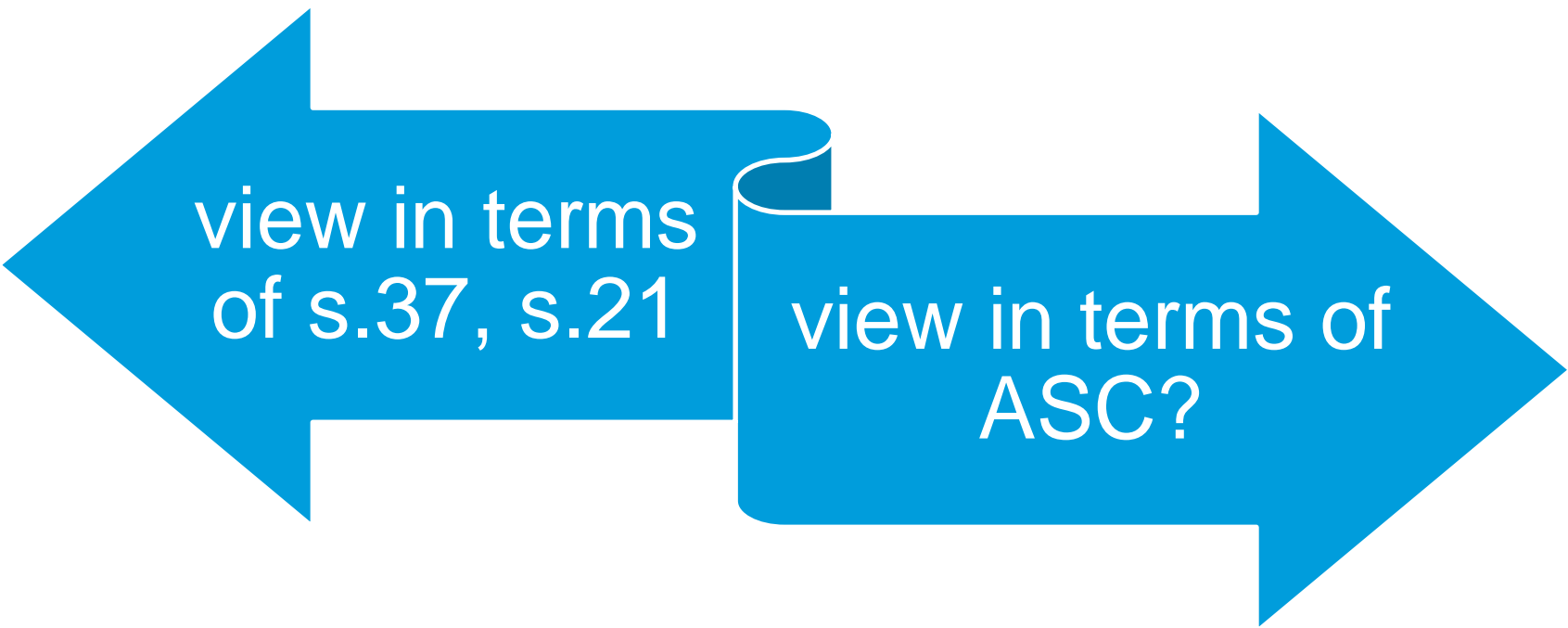
in fact not receiving therapies – needed an EHCP to make sure got them

“Ryan was not taking advantage of the facilities ... Ryan spent his time in his room”



# Consequences

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view in terms  
of s.37, s.21

view in terms of  
ASC?

# ed v social care: what are the limits?

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## Where does that leave us?

- extremely low threshold for EHCP
- takes v little to enable the SEN regime to take over social care responsibilities
- hard to see 19-25y.o. LD adult ever NOT coming within this
- a lot of social care has an ed'nal element

# What can be done?

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- **challenge claim that Part 2 can only be met if EHCP is in place**
  - **Upper Tribunal: focus on what it called “practical realities” not rights that are “more theoretical than real”**
- **clear evidence on issue of necessity**
- **challenge correctness of SJ v Bucks?**

# cf *Devon CC v OH* [2016] UKUT 292 (AAC)

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FTT ordered a specialist institution on the basis that it would provide a young person with "the best possible outcome in adult life"

Held: FTT had erred and given undue weight to Code of Practice. LA was required to have regard to the need to support the young person in order to facilitate their development and to help them achieve "the best possible educational or other outcomes". That did not mean that LA had a duty to achieve "the best possible outcomes"

# Other issues with 19-25year olds

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