

SEN changes and emerging issues

Laxmi Patel, Head of Education at Boyes Turner Solicitors takes us through some of her concerns regarding the new special education reforms.

The new special educational needs (SEN) regime came in force with the Children and Families Act (CFA) on 1 September 2014. It was billed as the 'biggest reform in SEN system in 30 years' and promised a change of culture and approach.

The reforms have been in place now for over six months. Below are key emerging concerns, some of which have been brought about by insufficient information in the legislation and accompanying guidance, poor interpretation of the law and local authorities playing catch up. Local authorities have a mammoth task. That being said, the proposed changes have been in the pipeline for a couple of years and the government has provided significant additional funding to implement the changes.

■ What is meant in the legislation of the need to support children to help them achieve 'best possible educational and other outcomes?' 'Best possible' raises the bar from 'adequate' provision under the old SEN regime. Also, what is meant by 'other outcomes'? Does this include health and social care outcomes? These issues will need to be clarified, either directly by the Department for Education or by the Special Educational Needs and Disability Tribunal.

■ Parental rights now automatically transfer to the young person when they are over compulsory school age (the end of the academic year in which they turn 16). From this point, there is a requirement for local authorities and the Tribunal to communicate directly with the young person. Does this mean that local authorities will no longer communicate with parents after this age? Who, when and how will these decisions be made? Without clarification, different local authorities may have different policies. What if the young person does not have mental capacity to make fully informed decisions? Who will assess the child where there are significant disagreements about capacity? A medical

practitioner, social worker or educational psychologist, or will the Court of Protection need to be involved?

- Some local authorities are not carrying out the transition to Education, Health and Care plans (EHCP) correctly. Many are simply moving the contents of an existing Statement to an EHCP word for word. Parents are not being involved in the process, there is no discussion about expected and desired outcomes, and local authorities are not adhering to the 14 week conversion timetable.
- For children in Year 6 who are moving to secondary school in the next academic year, the requirement is for local authorities to issue an amended Statement or EHCP by 15 February in the calendar year of transfer. This is to allow parents time to appeal against the school named and for matters to be resolved in good time before starting at the new placement. We have found that some local authorities have not issued an amended Statement by 15 February, that the transition to an EHCP has started but it has either been delayed or 'abandoned', and the local authority has not named a school. This is, understandably, causing a lot of anxiety.
- Most concerning is that a significant number of local authorities are not carrying out an EHC needs assessment when transitioning the Statement to an EHCP. The requirement to do this is set out in Articles 12 – 17 of the CFA (Transitional and Saving Provision) (No 2) Order 2014 and SEND Code of Practice 2015. We understand that there is additional work and cost involved in conducting an assessment for each transition but the law is clear on this point.

It may be too early to comment on how the new SEN regime will work in the long term. Given the cuts to local authority and health budgets it is more important than ever to ensure that the EHCP is robust and fit for purpose.