

Understanding one another's practice

Clinical negligence lawyers and deputies will have to implement the Children and Families Act 2014, explains **Edward Duff**



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On 1 September 2014, the most significant change for 30 years took effect in special educational needs (SEN) law, in line with the Children and Families Act 2014. Because of the considerable increase in the scope of the rules, it is no longer only education lawyers who need to understand the law.

The changes

A person is likely to have SEN if they have a greater difficulty in learning as compared to their peers. Examples range from dyslexia to cerebral palsy.

Before 1 September 2014, support for children with SEN was provided through a staggered approach, so that children were given increasing support with increasing need. Children with the most severe need were supported with a statement of SEN. Roughly 20

per cent of all children have SEN, whereas only 2 per cent have a statement.

From 1 September, the staggered levels of support have been replaced with one form of support, which is now called additional SEN support. Statements are replaced with education, health and care plans (EHCPs).

Additional SEN support requires schools to assess children's SEN, plan support, provide that support and review it. If schools cannot provide adequate support, an EHCP is likely to be necessary.

EHCPs provide support for the education, health and social care needs which result from the child's SEN. They can last until the child or young person reaches 25. The document is legally binding, so that the provision within it must be made available and funded by the local authority and/or health services.

It is important to note that if the support is provided in an EHCP, there is no means assessment to decide funding. The only question is whether the support is necessary for the child to help them achieve their 'best possible outcomes'.

Clinical negligence law

A child with a brain injury, whether acquired at birth or during childhood, is likely to have SEN.

When valuing a claim, you will be considering the impact that the acquired brain injury will have on the child's life. To do this, it is likely you have already received advice about SEN, albeit in a form targeted at the negligence proceedings. At this stage, it is crucial you do not forget that the child can seek the additional support of an EHCP and may need to seek specialist advice in order to secure that support.



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Lawyers need to be aware of the new rules, the support that can be obtained and the process for doing so, including costs of challenging this at a tribunal. This will be particularly important when putting together a schedule of loss and agreeing any order which limits your client's ability to access further services to support their needs.

Relevance to deputies

Deputies will need to be aware of what support is available via

the EHCP, rather than using the child's fund. Also, over the next three-and-a-half years, children with a statement will transition to an EHCP. Deputies should be ready to help their clients through that process and to make use of it to ensure as much extra support is included within the EHCP as the rules allow for.

The issue of capacity has been brought to the fore. At 16, children's wishes and feelings will take primacy over those of their parents, unless they lack capacity. If the child or young person has a deputy, it is possible that the local authority will look to them for this information.

The EHCP can also carry with it a 'personal budget', which gives a monetary figure to the support provided. Deputies may be expected to advise on, administer and control these budgets as part of their role.

The areas of negligence and Court of Protection have often worked together. That partnership will likely need to expand to include education lawyers. Doing so will ensure that claims are correctly valued, appropriate support is obtained and the child's compensation is preserved.

The holistic Children and Families Act means that we will need to be prepared to understand one another's practice in far more detail than ever before. **SJ**