



FAMILY UPHEAVAL

Laxmi Patel on the changes brought in by the Children and Families Act 2014

The Children and Families Act 2014 came into force on 1 September last year, making sweeping changes to several areas, from family justice to shared parental leave. Part 3 of the act makes changes to provision for children and young people in England with special educational needs (SEN) and disabilities. The new legislation is widely considered to be the most ambitious set of reforms in this area of law for 30 years, and has implications for lawyers who practice in areas other than education.

The law

A child or young person (up to 25 years) is likely to have SEN if they have greater difficulty in learning than their peers. This can range from relatively mild SEN, such as dyslexia, to more severe SEN which may stem from an acquired brain injury or following a traumatic accident.

Assistance for children with SEN is given at school through a graduated system, with support increasing according to the level of need. Under the old SEN regime, children whose needs could not be met from the school's delegated budget received additional support - such as a 1:1 teaching assistant, speech and language therapy or specialist equipment - through a 'statement of SEN'. The statement lasted until the child reached 19 years. Young people leaving school to go on to further education received further support through learning difficulties assessments.

Under the new SEN regime, statements of SEN and learning difficulty assessments are being gradually replaced by 'education, health and care plans' (EHCP). The EHCP is legally binding; the local authority has a legal duty to 'secure' the educational provision and social care provision provided under the

Chronically Sick and Disabled Persons Act 1970, and the local health care provider has a legal duty to 'arrange' the health care provision specified.

Other significant changes are:

- The EHCP can last until the young person reaches 25 years. This means that the young person can continue to receive support if they proceed to further education or if they start an apprenticeship.
- The local authority must provide the support needed for the child or young person to achieve their 'best possible outcomes'. The previous requirement was only to provide 'adequate' support.
- The young person or their parents can request a personal budget in respect of the provision outlined in the EHCP. If the local authority agrees to make direct payments, parents can choose and fund their own child's school support.
- In relation to mental capacity, the Children and Families Act 2014 sets out that when a person reaches 16 years, provided they have mental capacity, then their wishes and feelings will take primacy over that of their parents. If there is any disagreement about mental capacity, this may need to be resolved by an appropriate assessment or by application to the Court of Protection.

What should PI lawyers be aware of?

Personal injury lawyers will work with children or young people whose injury results in a disability or impairment that affects their ability to access learning. When valuing a claim, they will need to consider the support that the child or young person is entitled to receive at school. If provision is set out in the EHCP, the local authority must provide it. It is important to

remember that any support outlined in the EHCP is not means tested. The test is whether the child or young person requires that support.

A tightly constructed EHCP can provide for a range of support including specialist equipment such as alternative communication aids, IT equipment, therapies, 1:1 teaching support, or funding for a specialist day or residential placement at an independent/non-maintained school. All this can be costly for the local authority, but may be essential for the child/young person. Parents often have to appeal to the Special Educational Needs and Disability Tribunal to get the necessary provision into their child's statement/EHCP. Personal injury lawyers need to be aware of this, and must include the cost of challenging local authority decisions into their schedule of loss. They must use caution when agreeing any Order that limits their client's ability to access further services to support their needs.

Best outcomes

The Children and Families Act 2014 introduces a system of support from birth to 25 years of age. A key change is that education, social care and health practitioners must work together to seek 'best possible outcomes' for children and young people with SEN. Personal injury lawyers need to be aware of how the changes affect the children and young people they work with, and seek advice where appropriate in order to ensure that they are also able to achieve 'best possible outcomes' for their clients.

Laxmi Patel is a solicitor and head of education at Boyes Turner; www.sen-solicitors.com. Boyes Turner will be available at APIL's annual conference next month to answer questions on special educational needs and the Children and Families Act