

Foreword

by Jane McConnell

Judge of the First-tier Tribunal (Health, Education and Social Care Chamber) and Lead Judge SEND

Since the introduction of the Children and Families Act 2014, the SEND (special educational needs and disability) legislative framework has been undergoing its biggest change in over 30 years. As children and young people supported on School Action/School Action Plus or with a statement of SEN are moved from the old law under the Education Act 1996 into the new legal landscape of SEN Support or education, health and care (EHC) plans it is important for all those affected to understand the difference in the approach the law now requires to be taken.

The trigger point for this change came following the Lamb Inquiry into parental confidence in the SEN System which reported in 2009. I was a professional adviser to the inquiry and the overwhelming evidence we heard was that the then legal system was not working for the children and young people it sought to protect. It was considered outdated as it failed to see a child or young person with SEND holistically. Instead it supported local authorities to identify silos of need in the areas of education and social care, whilst health needs and provision were dealt with by an additional, completely separate, system. The green paper issued by the government in 2011, which set the development of new legislation into motion, proposed a new approach which would put children and young people at the heart of the process. It looked to establish new legal rights requiring local authorities and health providers to join up their approaches and work collaboratively. All agencies would be required to work in co-production with parents and young people.

The final legislation, as enacted by Parliament, reflects this goal to an extent. It widened the legal framework to include children and young people from 0 to 25 years old. Whilst the threshold for getting a higher level of support than an education placement can provide from its own resources is still based on educational need, the EHC assessment process that must then be followed by a local authority has a wider remit. It must include the local authority seeking information v

and advice from not just educational professionals, but in addition health and social care practitioners. Though the legislation as originally drafted did not give the First-tier Tribunal the powers to consider and decide issues concerning health and social care, a pilot of powers to make recommendations in these areas across all local authorities for a minimum period of two years starting in 2018 will bring the process closer towards the original goal of a child or young person being considered as a 'whole' individual.

As with any new law, we are in a period where the true scope of what it requires still has to be tested and clarified through the development of case-law. While this is happening the legal framework has to be made to work to provide appropriate support for the vulnerable children and young people it seeks to protect and empower.

Whether you are a legal practitioner, a local authority, early years provider/school/further education college, professional working with children and young people with SEND, parent of a child with SEND or young person with SEND, it is vital that you have reliable resources on which you can rely to help you to understand and unpick what might be otherwise be considered a tangled web of legal rights, policy and practice. This publication seeks to do this in a way which divides areas of the SEND legal framework into the specific legal steps in the process of identifying and making provision to support our children and young people with SEND. It is a legal handbook so provides an in-depth level of legal research and comment. It is not intended to be a simple guide to this area of practice. However, it is written in a style which I consider will be accessible to many different audiences.

Consistent application of the SEND legal framework will ensure good practice in local authorities and ultimately be a safety net to catch children and young people on occasions where the system fails to do so successfully. As always the ultimate advice to those seeking to ensure this legislation is effective has to be 'know the law and apply the law'. This publication will help to do this.

Tribunal Judge Jane McConnell MBE
March 2017