

## Local authority duties to 19 – 25 year olds

Ben Amunwa, 19 May 2016

### Introduction

1. A senior Judge once concluded that there was no basis for extending the old SEN framework to include persons over the age of 19.<sup>1</sup>
2. Parliament has since taken a new approach. Section 46 of the Children and Families Act 2014 ('the 2014 Act') extends the new SEN framework to cover 0-25 year olds.
3. The policy justification for this appears to be two-fold.
4. Firstly, the government has expressed concern that young persons ('YPs') with SEN are not being adequately supported into paid employment. The National Audit Office estimates that supporting 1 person with a learning disability into employment can increase that person's income by between 55 and 95 per cent.<sup>2</sup>
5. Secondly, the government is keen to make savings on the cost of lifetime adult support. Equipping a YP to live semi-independently reduces lifetime support costs by £1 million.<sup>3</sup>

### The Code of Practice

6. Accordingly, Chapter 8 of the 0-25 SEND Code of Practice ('COP') deals with how to support YP with SEN or disabilities to prepare for adult life and achieve "*the best outcomes in employment, independent living, health and community participation*".
7. Chapter 8 uses similar wording to the principles established by section 19 of the 2014 Act, which requires Local Authorities to support YPs "*to achieve the best possible educational and other outcomes*". Unlike the pre-existing duty on local authorities to "encourage, enable or assist [YPs or young adults] to participate in education or training",<sup>4</sup> there is a much stronger emphasis is on high aspirations for YPs, increasingly

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<sup>1</sup> *R. (on the application of B) v Islington LBC* [2010] EWHC 2539 (Admin), per Mr Justice

<sup>2</sup> 'Oversight of special education for young people aged 16-25' (November 2011)

<sup>3</sup> *Ibid.*

<sup>4</sup> Section 68 of the Education and Skills Act 2008.

involving them in decision-making as they mature and giving effect to their wishes.

8. What follows is a necessarily selective overview of some of the key duties for local authorities for 19-25 year olds.

#### Key duties

9. In addition to the core principles in section 19 of the 2014 Act, the following duties can be derived from Chapter 8 of the COP.

#### *Provision*

10. Colleges must continue to use their “best endeavours” to secure the special educational provision needed by all YP aged 19 to 25 with SEN. Where a College is unable to discharge this duty, the local authority may be required to step in and provide goods and services directly (see sections 64 and 66 of the 2014).
11. Local authorities must set out in the Local Offer the support and provision that 19 to 25-year-olds with SEN can access, regardless of whether they have an EHC plan or not (8.50).

#### *Higher Education*

12. The Local Offer must make YPs aware of what support is available to them in Higher Education and how to claim it, including Disabled Student Allowance (‘DSA’) (8.44). There is an expectation on local authorities to plan “a smooth transition” to HE.
13. Where a Higher Education place has been confirmed for a YP with an EHCP, send the Plan to the “relevant person” in the HE institution if asked to do so by the YP (8.45). The Guidance is silent on the identity or role of the “relevant person” for these purposes.

#### *Adult health and care services*

14. Local authorities must co-operate with the health service where YP are moving to adult health services and align EHCPs with care plans. The EHCP is the primary document, which covers health and care related assessments and the annual review process should incorporate these aspects (8.69).

15. Adult social care provision must be set out in section H2 of the EHCP.
16. They must also put in place statutory care and support plans (CSPs) for young people with eligible needs for adult care and support (8.68) and meet the needs set out in CSP.

### *Budgets and funding*

17. Where the YP requests a Personal Budget, the final allocation of funding budget must be sufficient to secure the agreed provision specified in the EHC plan and must be set out as part of that provision. If a direct payment is not set at a suitable level, it must be reviewed and adjusted. Local authorities must not make direct payments for the purpose of funding a school place or post-16 institution (9.119).
18. For 19- to 25-year-olds with EHCPs, funding is provided by the Education Funding Agency ('EFA'). Students with high needs receive local authority support. No fees are chargeable for these students.
19. For those aged 19 and over without EHCPs, funding is provided by the Skills Funding Agency (SFA). Fees are chargeable by the College. Government funding is available for students who meet eligibility and residency criteria (see COP 7.33 – 7.34 and 8.51 – 8.52). The Local Offer should include apprenticeships for this age group (8.52).

### Comment

20. EHCPs offer a significant financial advantage for over 19s, namely to avoid fees at College. Under the new framework, it is possible for a YP to remain in College for 6 years on an EHCP and pay no tuition fees as an alternative to entering the world of work and independent living.
21. This aspect of the new framework could place unintended obstacles on the pathway to employment. The COP notes that there is no expectation that a person should remain in College until they turn 25 (9.151), however in order to cease the Plan, reference must be made to whether the outcomes have been achieved.
22. The COP recommends using Apprenticeships, Traineeships and Supported internships to prepare YPs for employment, but there is no clear duty to make use of these programmes and EHCPs can be retained while the YP is on them.

23. More broadly, many parts of Chapter 8 do not constitute statutory duties but set out a wide range of non-binding expectations on local authorities.

24. Chapter 8 also contains some highly subjective, non-legal language.

Section 8.28 is a good example of this:

*Schools and colleges should raise the career aspirations of their SEN students and broaden their employment horizons. They should use a wide range of imaginative approaches, such as taster opportunities, work experience, mentoring, exploring entrepreneurial options, role models and inspiring speakers.*

25. It is unclear how such non-statutory obligations should be fulfilled by local authorities (or measured by SENDIST). However, a logical starting point might be the Section E of the EHCP (Outcomes), which provides a reference point for assessing progress and whether the Plan is still required if the outcomes have been achieved.

26. This highlights the importance of ensuring that an EHCP is appropriately worded in Section E and that the YPs aspirations are reflected in a realistic and time-bound manner.

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