



# Introduction to Contact a Family Webinar with Steve Broach

- Welcome to the first Contact a Family Webinar for parent carer forums and those who work with them
- This is relatively new technology for us, so please do bear with us from a technical point of view
- Those of you joining by pc, laptop, tablet or smart phone should now be able to see my introduction slide and see me thorough my webcam
- As there are so many attendees with us this morning, it is not practical for interaction to be made verbally; therefore you will all remain 'muted' throughout
- This session will consist of a presentation following through my slide presentation followed by a question and answer session

## Q&A Session

- If at any point during the presentation you have question that you would like to ask, please use the question icon on your GoToWebinar tool bar on your screen
- This will allow you to type your question in to the text box and submit this to the Webinar administrator





## Q&A Session

- At the end of the presentation, I will select as many relevant questions to answer as time allows, if similar questions are received I will condense these where possible
- Further relevant questions, not covered in the time allowed, will be answered and posted on the Contact a Family website along with the recording of this Webinar, details of which will be circulated early next week
- Please note that I will only consider questions relevant to forums, unfortunately I am unable to answer case specific queries
- At the end of the Webinar a short questionnaire will launch, please take the time to complete this as this will assist with future online training events



# Contact a Family Parent Forum Webinar

Post 16 Education and Transport

Steve Broach, Barrister, Doughty Street Chambers

**'at the  
heart of  
human  
rights'**



## Post-16 education - school

### Statementing duty continues to 19<sup>th</sup> birthday

“child” includes any person who has not attained the age of 19 and is a registered pupil at a school – Education Act 1996 s 324(5)

*Essex CC v Williams* [2011] EWCA Civ 1315 - no duty to continue to provide a statement of special educational needs for M once she had reached the age of 19, and the statement had lapsed for that reason, nor a duty to make formal reviewable determination that the statement would cease



## Post-16 education - school

### Statementing duty continues to 19<sup>th</sup> birthday

Court of Appeal in *Williams* referenced the discretion in the SEN Code of Practice (para 9:61) which enables local authorities to continue to fund individuals who have reached the age of 19 until the end of that academic year.



## Post-16 education - school

### Ceasing to maintain statements under 19

Once a statement is made, the local authority must maintain it unless it is satisfied that 'it is no longer necessary' to do so; EA 1996 Sch 27 para 11(1).

Right of appeal to the tribunal against a decision by an LEA to cease to maintain a statement; Sch 27 para 11(2)(b).



## Post-16 education - school

### Ceasing to maintain statements under 19

Any appeal to the Tribunal allows Tribunal not only to order that statement should continue but to re-write statement.

As such, in cases where child is under 19 there has to be a formal decision to cease to maintain the statement which can be appealed; *R (Hill) v Bedfordshire CC* [2008] EWCA Civ 661



## **Post-16 education - school**

### Ceasing to maintain statements under 19

Where a local authority is proposing FE provision, 'it is not sufficient for LEAs to have a general expectation that an FE institution should be able to meet a young person's needs' – Code of Practice at 8:123



## Education Transition

### Education

Should generally be lead agency

- SEN transition planning – year 9 annual review, transition plan
- Learning Difficulty Assessments – s 139A LSA 2000
  - Duty or power, depending on circumstances (duty if statement, power otherwise)
  - Responsibility with ‘home’ local authority where child has statement, with authority where education provided otherwise.



## LDAs

### S 139A Guidance

Titled: 'SECTION 139A LEARNING DIFFICULTY ASSESSMENTS  
GUIDANCE FOR LOCAL AUTHORITIES'

#### Key points

- Local authorities are responsible for ensuring that high quality and timely LDAs take place. Early identification of those requiring a LDA is essential to allow time for the commissioning of any necessary provision and support to take place.
- Having determined that a young person requires a LDA a local authority must continue to support the young person up to the age of 25 if they stay in further education or training.
- Local authorities must use the evidence from the LDA to make consistent, effective and robust decisions that will support the young person to move towards positive outcomes.
- The LDA report must be specific about the level of need required and the support and learning provision required to meet needs.



## Education Transition

LDAs – when should power be exercised?

Guidance at section 9:

- Requirement for a ‘transparent policy’
- Decision is for the local authority
- BUT ‘should’ use their power to undertake an LDA where:
  - YP in last year of compulsory schooling likely to need additional support as part of his future education and would benefit from an LDA
  - YP over compulsory school age and likely to leave school at end of year (who would benefit etc)
  - YP in or about to start post 16 education or training (who would benefit etc)



## Education Transition

LDAs – key principles

Guidance at sections 11 onwards:

- Should result in a clear report – all possible options which support the aspirations of the young person should be considered
- Assessors should have the relevant experience and skills to work with the YP and their parents
- Assessment should be person centred with a ‘seamless transition’ from previous assessments / Statement
- Must allow time for commissioning of necessary provision / support



## Education Transition

LDAs – key principles (2)

Guidance at sections 11 onwards:

- Should be reviewed regularly to ensure continues to meet needs of YP
- Assessment must take account of YP's views and wishes
- YP should be asked to consent to share assessment with provider
- Should consider wider needs, inc transport
- Should focus on progression and include support necessary to access appropriate provision
- Multi-agency working should be 'embedded'



## Education Transition

LDAs – key principles (3)

Guidance at sections 11 onwards:

- Placement decisions should be ‘value for money’ and should be made after the education and training needs have been clearly identified
- LAs can take account of the available budget in determining placements – but placements should deliver ‘positive outcomes’ for young people
- Consideration should be given to total cost implications, including health and social care costs
- Should be an accessible complaints process with an internal review by senior officer(s) – otherwise LGO / JR



## Learning Difficulty Assessments (LDAs)

Alloway v Bromley [2008]:

‘[These statutory provisions] in my judgment, require the following: (1) an assessment of (a) the subject's educational and training needs and (b) of the provision required to meet them; (2) a written report of that assessment.

In my judgment, the assessment of the provision to meet those needs should not be merely a set of recommendations as to what would in theory, or ideally, be required, but should identify what can actually (and realistically) be provided. To assess and report on merely theoretic provision would not, in my judgment, be provision which was “required to meet” the needs identified for the purposes of the section.’



## School Transport

- LEAs must arrange free suitable home-to-school travel arrangements for eligible children of compulsory school age (still year you turn 16) for whom no, or no suitable, free travel arrangements have been provided
  - Distance from school
  - Unable to walk
- LEAs *may* still provide school transport for non-eligible children but can charge
- Duty to provide transport for children with Statements if attending nearest suitable school
- LEAs (or Tribunal) can agree to name a parent's preferred school on basis that parent funds / arranges transport



## Transport – post 16

### 16-18 transport duty

- The local authority must publish a ‘transport policy statement’ each year; Education Act 1996 s 508AA
- The statement must set out the arrangements the authority considers it necessary to make for facilitating the attendance of persons of sixth form age receiving education or training at schools or FE colleges
- Duty also covers financial assistance with transport
- Statement must also explain how governors of schools / colleges will provide assistance
- Statement must be published by 31 May for following academic year



## Transport – post 16

### Guidance – 2010 Post-16 Transport Guidance

- Overall intention of the duty is to ‘ensure that learners of sixth form age are able to access the education and training of their choice and ensure that, if support for access is required, this will be assessed and provided where necessary’
- LAs must consult young people of sixth form age and parents in drawing up Transport Policy Statement
- Policies must not distinguish between different types of provision (eg Academies) and should cover apprenticeships



## Transport – post 16

### Guidance – 2010 Post-16 Transport Guidance

- Must have regard to the needs of those who could not access education or training if no transport arrangements were made – EA 1996 s 509AB(3)(a)
- Specific arrangements for disabled learners must be set out in the policy
- ‘Local authority transport policies should be supportive of reasonable choice’ (between courses and establishments)



## Transport – post 16

### Guidance – 2010 Post-16 Transport Guidance

- Transport of needs of disabled learners should also be considered in LDAs
- LAs can take into account DLA in assessing whether support is needed (as a proxy for severity of disability) but ‘may not require the learner to use this to support their transport costs to learning’
- Good practice to extend transport arrangements after 19 (see also adult transport duty)



## Transport – post 16

Duty towards young adults with LDAs ('adult transport duty')

EA 1996 s 508F-G

- LAs must make such arrangements as they consider necessary to help young adults aged 19-25 with LDAs with transport to FE / HE
- This transport must be provided free of charge
- must have regard (among other things) to the age of the adult and the nature of the route, or alternative routes, which the adult could reasonably be expected to take.
- Have to publish specific Transport Policy Statement for this group
- Have to consult, including with young people and parents



## Social Care Transport Duty

### Chronically Sick and Disabled Persons Act 1970 s 2

Duty to provide 'assistance to [the disabled person] in taking advantage of educational facilities available to him'

Further duty to provide assistance in travelling to use social care facilities

Only arises where it is necessary to meet the person's needs – so if DLA mobility component could reasonably be used may be no social care duty.



## (5) Equality Act

- Replaced most relevant provisions of DDA 1995 from 1<sup>st</sup> October 2010
- Disability now a 'protected characteristic' – EA 2010 s (materially the same as DDA definition) – further detail in Schedule 1
- Prohibited conduct – key types:
  - Direct discrimination – s 13 (includes by association)
  - Discrimination arising from disability – s 15
  - Indirect discrimination – s 19
  - Failure to make reasonable adjustments – ss20-22



## (5) Equality Act

Discrimination arising from disability

No need for any 'comparator'

Discrimination if:

- P knows or ought to know that a person is disabled
- P treats the disabled person unfavourably 'because of something arising in consequence of' his disability; and
- P cannot show that the treatment is a 'proportionate means of achieving a legitimate aim'



## (5) Equality Act

Reasonable adjustments

Duty is anticipatory, continuing and evolving

Three elements:

- Provision, criterion or practice – take reasonable steps to avoid disadvantage
- Physical feature – take reasonable steps to avoid disadvantage
- Auxiliary aid or service – take reasonable steps to provide



## Questions and Discussion

Please remember that at the end of this Webinar a short questionnaire will launch - please take the time to complete this as it will assist with future on line training events

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