

## CONTEXT PAPER: EDUCATION

### The Commission

1. The Low Commission on the Future of Advice and Legal Support has been established to develop a strategy for access to advice and support on social welfare law issues in England and Wales. More information about the Commission can be found at [www.lowcommission.org.uk](http://www.lowcommission.org.uk).

### Context papers

2. This paper is part of a series of draft context papers produced by the Commission. Each paper focuses on one particular aspect of social welfare law, although the Commission recognises that users will often face difficulties or problems in clusters. The Commission will also publish a separate paper looking at cross-cutting themes.

### Consultation

3. Please share with us your views on each or any of the papers. We are asking for views on these papers from a wide range of organisations and individuals and would welcome in particular:
  - a. supplementary information or statistics (at a national and/or local level) that can be included in the sections on 'current position' and 'forthcoming changes';
  - b. views on whether the background changes highlighted in 'forthcoming changes' section are the appropriate ones for the Commission to consider;
  - c. reflections on the 'discussion issues' raised in the final section of the paper.
4. Any comments submitted will be carefully considered and used to inform the Commission's work and final recommendations. Comments may be published on the Commission's website so please indicate if your submission is confidential.

### Your comments

5. Please submit your comments by visiting the Commission's website: <http://www.lowcommission.org.uk/Submit-Evidence> or by emailing [sogilvie@lag.org.uk](mailto:sogilvie@lag.org.uk). You can also send any comments to: Sara Ogilvie, The Low Commission, 242 Pentonville Road, London, N1 9UN.
6. The closing date for comments on this paper is x, but the Commission will accept more general evidence submissions until 31 May 2013.

## I. CURRENT POSITION

### Legal aid

7. Legal help is currently available for a range of education matters, including school admissions and exclusions, out of school provision, disputes with universities and further education institutions, advice on appeals to the First-tier (Special Educational Needs and Disability) Tribunal and the Special Educational Needs Tribunal for Wales about obtaining, revising or implementing a statement of special educational needs. Funding is not available for representation at a First-Tier Tribunal, although it can be possible to get funding for representation at the Upper Tribunal.
8. The Legal Services Commission figures report that out of 3,768 matter starts for education in 2010-2011:
  - 822 were handled by solicitors
  - 361 were handled by not for profit organisations
  - 2,585 were handled by telephone (which includes advice on papers and negotiations where appropriate with defendant authorities).

### **Other advice**

9. Local Authorities in England are obliged to set up a Parent Partnership to give parents of disabled children or children with special educational needs impartial advice and support. The particular services offered by Parent Partnerships vary with some taking a much more pro-active role in advising parents on the shortcomings of proposed local authority provision whereas others are unable to offer much in the way of independent advice. . There is a National Parent Partnership Network funded by the Department for Education.
10. The Independent Parental Special Education Advice (IPSEA) is a charity offering free and independent advice to parents of children with special educational needs in England and Wales on local authorities' duties to assess and provide for children with special educational needs, exclusions of children with special educational needs or disabilities and discriminatory action by local authorities. IPSEA offers a range of advice services, including its website, email, telephone advice line and a tribunal advice line. It has 148 volunteers who provide support and advocacy for parents making an appeal to the SEND. Last year, it recorded that the Advice line answered 1849 calls, its tribunal line answered 681 calls and it assisted in 350 tribunal cases. The organisation is independently funded and also creates income by selling training courses to parent partnerships and local authorities.
11. The Lamb Inquiry on Special Educational Needs and Parental Confidence recommended the creation of a national telephone advice line for parents. The contract for a telephone advice line was given to Contact A Family, and during the first six months of operation it received 2,500 calls. The service does not offer advice on appeals.
12. In Wales, SNAP Cymru provides information and independent advice and support on a range of education and special educational needs issues. The organisation receives its funding from a number of sources, including all the unitary local authorities in Wales and the Welsh government. It currently also receives LSC funding.

## **II. FORTHCOMING CHANGES**

### **Legal aid**

13. In its consultation on proposals for reform of legal aid, the government proposed removing all education cases from the scope of public funding, at an estimated saving of £1 million. However, the government was persuaded by responses to the consultation to keep legal help for special educational needs cases in scope. It gave a number of reasons to support the inclusion of legal help for SEN cases, including that many claims could be recast as disability discrimination claims. This would mean that legal help would be available but it may also have the effect of entrenching cases rather than promoting earlier resolution; It was inconsistent to remove SEN from scope while retaining community care in scope, as the nature of the issues involved is comparable; and parents involved in SEN cases are more likely to have substantial care responsibilities and will be in need of help.
14. The government remained unpersuaded that other education issues should receive public funding. The government's updated impact assessment asserted that this would lead to a saving of £0.5million.
15. Access to advice for SEN cases will be via the mandatory telephone gateway. 3 contracts have been given to: Maxwell Gillott solicitors, the Children's Legal Centre and National Youth Advocacy Service. This will mean that individuals who want to apply for legal aid for SEN cases will be required to do so by contacting the helpline. If the individual is eligible for help, they will be able to receive it primarily via telephone, although there may be cases where face-to-face advice is provided. However, as before, the advice can include dealing with all documents, lodging appeals and negotiating with defendants.

### **Special educational needs law**

16. In England, the government has introduced a Children and Families Bill in spring 2013, which included changes in the special educational needs area. Draft legislation published by the government in 2012 included replacing a statement of educational need with a health, education and care plan; creating the power to pilot a right of appeal by a child to the SEND tribunal; and, the introduction of a mediation stage before an appeal can be heard by the First-tier (Special Educational Needs and Disability) Tribunal. Following earlier consultation, this will no longer be compulsory, but parents will have to demonstrate that they have considered the issue by obtaining a certificate from the mediation body to state that the parent has received advice and information from them but declined the offer of mediation.
17. In 2012 the Welsh Government also consulted on proposals for changes to SEN legislation. These proposals included replacing statements of SEN with a statement on integrated education, health and care needs. The proposals would make a number of changes to the appeals process with greater emphasis on early dispute resolution and would also introduce a mandatory mediation stage. In Wales, legislation is already in place allowing the child a right of appeal to Special Educational Needs Tribunal for Wales and the right has already been piloted in three areas. The Welsh Government has also consulted recently on

### **New school exclusion procedures**

18. In England, new school exclusion procedures came into place in September 2012, replacing independent appeal panels with independent review panels. The new procedures introduce changes to the legal remedies available to permanently excluded pupils and it has been suggested that the new approach will introduce complicated legal concepts into the process. For example, the new panels will only be able to quash the decision of a governing body if the decision is deemed to raise

issues in keeping with the principles applicable in an application for judicial review. Also, since the new mechanism is a review panel rather than an appeal body, it will not be automatically entitled to take into account new evidence when recommending that the initial decision be quashed. However, if deciding whether to recommend that the governing body reconsiders its decision, it may be able to consider new evidence. A large proportion of children who are excluded either have statements of special educational needs or have some elements of learning difficulties which need additional support.

### **School admissions appeals code and exclusion appeals code**

19. Provisions governing the rules for admission and exclusion appeals have evolved and in 2012 the Department for Education produced a new School Admissions Appeal Code and a new School Admissions Exclusions Appeal Code. These codes have statutory force and admission authorities, governing bodies, local authorities, admission forums, schools adjudicators and admission appeal panels in England must adhere to them. The new Codes are shorter than previous versions, containing less detail on how the minimum requirement for fairness will be implemented.

### **III. DISCUSSION ISSUES**

20. The caseload of organisation such as IPSEA suggest that in addition to the legal help provided through the legal aid scheme, there is already much greater demand for help than the system currently provides. This view is echoed by the organisations providing legally aided telephone advice from April 2013. They consider that there is likely to be more demand for their services than they have the capacity to provide under the size of the contract issued by the Legal Services Commission. In its consultation on proposals for the reform of legal aid, the government suggested that there were many bodies offering advice on education issues. However, ACE – one of the organisations listed by the government in the consultation as an alternative source of advice – has recently had to close its advice helpline due to lack of funding. Similarly, Network 81 has also lost funding. IPSEA reports that in view of the forthcoming changes to SEN legislation, it will have to spend £100,000 - £150, 000 retraining its volunteers and updating its website and information systems. To what extent are these additional sources of help viable in the long term? What steps can be taken to help secure their future? Is there any way in which the current parent partnerships can be developed so that all are able to provide strong support to parents even if it means challenging the proposals put forward by their employers in the local authority?
21. What will be the impact of the greater push towards mediation prior to tribunal appeals on the need for advice? Is there any evidence about the type of support or advice parents may need in relation to either process or merits of a case prior to mediation? In its response to the consultation, the government noted that the cases remaining unresolved after mediation were likely to be the more difficult and intractable cases. Is this compatible with the lack of legal representation available at SEN appeal hearings?
22. Will the introduction of the complex legal considerations into the exclusion process, to be determined by panels with little experience of public law, lead to an increase in the number of unlawful decisions being taken at the same time as legal aid for advice to parents on this is being dropped?

23. Are the background changes to SEN and education legislation likely to make it more difficult for unadvised parents to navigate the system? What can be done to assist parents with reduced availability of legal aid?

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14 February 2013