

Advice on the responsibilities of Information Advice and Support Services towards Young People aged over 16

Introduction – Summary Advice

1. I am asked to advise the Information, Advice and Support Services Network ('IASSN') on an important point of statutory construction concerning the responsibilities of Information, Advice and Support Services ('IASS') to young people¹.
2. In particular I am asked to advise on whether IASS have responsibilities towards all young people in this age group, or whether they do not have any responsibilities to meet the needs for information, advice and support of young people (a) attending university or (b) in employment.
3. In summary, in my view the statutory scheme mandates that IASS have responsibilities towards all disabled young people, regardless of whether they may be attending university or in employment. It may be that IASS do not have to provide advice and information to young people attending university or to young people in employment who are not disabled, although in my view this is far from clear and IASS may still have responsibilities to this group in relation to their special educational needs. However in any event this is likely to be a small proportion of the population of young people who may want to access advice and information from IASS, most of whom will be disabled.² As such a pragmatic and sensible approach in my view would be for IASS to offer advice and information to any young person who seeks it on any relevant subject.

¹ 'Young person' means 'a person over compulsory school age but under 25'; section 83(2) CFA 2014.

² Albeit that the obligation to disabled young people is to provide advice and information on matters relating to their disabilities, as opposed to their special educational needs.

Background

4. The IASSN supports and promotes the work of IASS across England. Under the Children and Families Act 2014, IASS have replaced former Parent Partnership Services as statutory providers of free, impartial and confidential information, advice and support on a range of matters concerning disabled children and young people and children and young people with special educational needs.
5. Section 32 of the 2014 Act³ provides:

32. Advice and information

- (1) A local authority in England must arrange for children and young people for whom it is responsible, and the parents of children for whom it is responsible, to be provided with advice and information about matters relating to the special educational needs of the children or young people concerned.
- (2) A local authority in England must arrange for children and young people in its area with a disability, and the parents of children in its area with a disability, to be provided with advice and information about matters relating to the disabilities of the children or young people concerned.
- (3) The authority must take such steps as it thinks appropriate for making the services provided under subsections (1) and (2) known to –
 - (a) the parents of children in its area;
 - (b) children in its area;
 - (c) young people in its area;
 - (d) the head teachers, proprietors and principals of schools and post-16 institutions in its area.
- (4) The authority may also take such steps as it thinks appropriate for making the services provided under subsections (1) and (2) known to such other persons as it thinks appropriate.”

³ All following references to statutory provisions in this advice are to the Children and Families Act 2014 unless otherwise stated.

6. In essence, English local authorities ('LAs') are obliged to secure the provision of advice and information to specified children and young people, and their parents, about matters concerning the special educational needs and disabilities of the children and young people concerned, as well as to take appropriate steps to make such services known to specified persons, including the parents and the children themselves (as well as head teachers and such other persons as the local authority thinks appropriate).
7. Section 32 thus contains the key duty pursuant to which IASS are provided. I understand that while most IASS are provided by local authorities, around 25% are provided by voluntary sector organisations. The duty is for LAs to 'arrange' for advice and information to be provided, and not to provide IASS themselves. Essentially, local authorities have an obligation to secure the provision of advice and information, but it is left to the judgment of each LA as to precisely how, and by whom, the services will actually be provided.
8. The Code of Practice ('CoP') for SEN and disability was introduced pursuant to section 77(1). Section 77(4) provides that a range of persons and bodies including local authorities 'must' have regard to the CoP when exercising their functions under Part 3 of the Act.
9. Chapter 2 of the CoP is entitled 'Impartial information, advice and support', and concerns the information, advice and support ("IAS") which LAs 'must' provide for 'children, young people and parents' covering special educational needs, disability, health and social care.
10. Paragraph 2.4 of the CoP notes that IAS should be provided through a 'dedicated and easily identifiable service'. It refers to the fact that LAs have 'established Parent Partnership Services to provide information, advice and support to parents in relation to SEN', and that many LAs provide or commission IASS 'for young people'. Paragraph 2.4 goes on to say that LAs should 'build on' these existing services, to provide the IAS detailed in Chapter 2 of the CoP. Such services should be impartial, confidential and accessible,

and should have the capacity to handle face-to-face, telephone and electronic enquiries (CoP, para. 2.5).

11. Para 2.8 states that:

- a. 'The information, advice and support should be impartial and provided at arm's length from the local authority and CCGs
- b. 'The information, advice and support offered should be free, accurate, confidential and in formats which are accessible and responsive to the needs of users.'
- c. 'The provision of information, advice and support should help to promote independence and self-advocacy for children, young people and parents.'

12. Para 2.14 states that 'Young people are entitled to the same quality and level of information, advice and support as parents. Local authorities should recognise the specific needs of this group, while ensuring co-ordination and consistency in what is offered to children, young people and parents'. Para 2.15 states 'Young people **must** have confidence that they are receiving confidential and impartial information, advice and support.'

13. Chapter 2 of the CoP goes on to consider a number of other matters, such as the precise scope of the IAS which LAs are required to provide.

Advice

14. The key duty on LAs under section 32 is to arrange for children, parents and young people 'to be provided with advice and information'. My understanding is that every LA discharges the section 32 duty via an IASS, in keeping with the guidance in para 2.4 of the CoP. As such in practical terms the extent of the section 32 duty is also the extent of the responsibilities of IASS.

15. The duty under section 32 is in two parts in section 32(1) and (2), referred to in the remainder of this advice as 'sub-section 1' and 'sub-section 2':

- a. Firstly, sub-section 1 provides that ‘A local authority in England must arrange for children and young people for whom it is responsible, and the parents of children for whom it is responsible, to be provided with advice and information about matters relating to the special educational needs of the children or young people concerned.’
- b. Secondly, sub-section 2 provides that ‘A local authority in England must arrange for children and young people in its area with a disability, and the parents of children in its area with a disability, to be provided with advice and information about matters relating to the disabilities of the children or young people concerned.’

16. The scope of sub-section 2 in relation to young people seems to me to be straightforward. Advice and information must be provided to young people (a) with a disability⁴ and (b) who are in the local authority’s area. Unlike sub-section 1, there is no requirement that these are young people for whom the local authority is ‘responsible’.⁵ As such in my view IASS should offer services for all disabled young people in their local authority’s area, regardless of whether they are (for example) attending university or in employment.

17. The scope of the obligation owed by IASS to disabled young people is to provide them with advice and information about ‘matters relating to their disabilities’. This is obviously very broad and would seem to me to encompass information in relation to education, insofar as this information is disability-related – as well as other matters such as social care, preparation for adulthood etc.⁶ Indeed the language of sub-section 2 suggests that an IASS has to provide

⁴ Section 83(3) provides that ‘(3) A child or young person has a disability for the purposes of this Part if he or she has a disability for the purposes of the Equality Act 2010’. The definition of disability in section 6 of the 2010 Act is very broad, encompassing any physical or mental impairment which has a substantial and long-term adverse effect on a person’s ability to carry out normal day-to-day activities. Further guidance on the definition of disability is available from the Equality and Human Rights Commission: <https://www.equalityhumanrights.com/en/publication-download/equality-act-2010-guidance-matters-be-taken-account-determining-questions>

⁵ I note in passing that para 2.1 of the CoP does not appear properly to reflect this distinction. The relevant passage reads; ‘Local authorities must arrange for children with SEN or disabilities for whom they are responsible, and their parents, and young people with SEN or disabilities for whom they are responsible, to be provided with advice and information about matters relating to their SEN or disabilities, including matters relating to health and social care’ (emphasis added). Of course the guidance in the CoP cannot override the primary legislation.

⁶ See para 2.17 onwards in the CoP for more on what information is to be provided by IASS.

advice and information to a disabled young person on higher education matters which are disability-related, for example the requirement on higher education institutions to make reasonable adjustments and the potential availability of Disabled Students' Allowance.

18. The scope of sub-section 1 is somewhat less clear. This is because this aspect of the duty is qualified by reference to young people 'for whom [the local authority] is responsible'. The definition of 'When a local authority is responsible for a child or young person' is found in section 24. This provides that '(1) A local authority in England is responsible for a child or young person if he or she is in the authority's area and has been (a) identified by the authority as someone who has or may have special educational needs, or (b) brought to the authority's attention by any person as someone who has or may have special educational needs'.
19. This in itself is not problematic; the complexity arises from section 84(4) which provides that 'A reference in this Part to "education" (a) includes a reference to full-time and part-time education, but (b) does not include a reference to higher education, and "educational" and "educate" (and other related terms) are to be read accordingly' (emphasis added).
20. It is therefore necessary to consider the definition of 'special educational needs' in section 20, ensuring this is read in accordance with section 84(4) as excluding any reference to higher education. Section 20(1) provides that '(1) A child or young person has special educational needs if he or she has a learning difficulty or disability which calls for special educational provision⁷ to be made for him or her.' Under section 84(4), the 'educational' matters in both 'special

⁷ Special educational provision for young people is 'educational or training provision that is additional to, or different from, that made generally for others of the same age in...(c) mainstream post-16 institutions in England', see section 21(1). Under section 83(2), 'Post-16 institution' means "an institution which (a) provides education or training for those over compulsory school age, but (b) is not a school or other institution which is within the higher education sector or which provides only higher education"; 'mainstream post-16 institution' means 'a post-16 institution that is not a special post-16 institution'; and 'special post-16 institution' means 'a post-16 institution that is specially organised to make special educational provision for students with special educational needs'.

educational needs' or 'special educational provision' cannot include matters relating to higher education.⁸

21. As such it may be that a young person who has a secure and ongoing place in higher education falls outside the scope of the duty in sub-section 1. However if there is any prospect that the young person may require special educational provision in a further education rather than a higher education setting, it seems to me that they are likely also entitled to advice and information under sub-section 1. This is because the definition of special educational needs requires only that the young person 'has a learning difficulty or disability which calls for special educational provision to be made' (emphasis added), not that such provision is actually being made for them.

22. Indeed it can be argued in my view that the definitions of 'special educational needs' and 'special educational provision' could be satisfied so as to make a LA 'responsible' for a young person under sub-section 1 even if they have a secure place at university. This is because the definitions merely require the LA to look at whether the young person would require educational or training provision that is additional to or different from that made generally in mainstream post-16 institutions. The definitions are not related to a young person's attendance at a particular post-16 institution. As such on this view a young person enrolled on a higher education course can still have 'special educational needs'⁹ and be a young person for whom the LA is 'responsible' so as to trigger the sub-section 1 duty. There may however be little point in such a young person seeking to access an IASS in relation to educational issues, given that the provision of advice and information as to higher education is outside the remit of an IASS under sub-section 1¹⁰ (although not under sub-section 2 in relation to disabled young people, as discussed above).

⁸ See *Kensington and Chelsea v GG*, discussed below, at [5][g]; 'Functions under Part 3 CFA 2014 cannot be exercised to support a young person through higher education'. However in my view this general statement is wrong in relation to the obligation to provide advice and information to disabled young people, as set out above in the discussion in relation to sub-section 2.

⁹ As was conceded by the LA in *Kensington and Chelsea v GG*, discussed below.

¹⁰ Because 'advice and information about matters relating to the special educational needs' has to be read as excluding 'higher education' under section 83(4).

23. The need for advice and information to be provided to young people who may enter higher education was emphasised by the Upper Tribunal in *Royal Borough of Kensington & Chelsea v GG (SEN)* [2017] UKUT 141 (AAC) at [81]:

‘...it is a young person's prerogative to be uncertain about what he wishes to do with his life. One cannot expect all young persons to present with clearly formed plans about their educational future. A vague aspiration to pursue HE or the inclusion of HE amongst the educational options that a young person is thinking of pursuing should not be seized upon as a reason to exclude a young person from the CFA 2014 system of entitlements. In this respect, local authorities should bear in mind their general obligations under section 19 and 32 CFA 2014. They may need to explain to a young person that, if he wishes to pursue HE, the CFA 2014 cannot operate to support him through a course of HE.’¹¹

24. *Kensington and Chelsea v GG* also supports my view that the definition of ‘special educational provision’ and therefore ‘special educational needs’ can be satisfied even if a young person is currently enrolled on a higher education course. See [5][e] (emphasis added):

‘section 21's definition of special educational provision is capable of being satisfied even if a young person is formally enrolled on a course of higher education or is considering pursuing such education. While, in many cases, this will inevitably lead a local authority to refuse to carry out an assessment under section 36 of the CFA 2014, there may be cases when it will not. For example, a student formally enrolled on a course of higher education may experience some adverse health event or for some other reason be unable to cope with the demands of such education so that, in the near future, he or she wishes to pursue a less demanding course of further education instead’.¹²

25. The same approach would seem to me to apply to a young person in employment. It seems to me likely that at most it would only be if there was no realistic prospect of them requiring special educational provision in a further

¹¹ This case also demonstrates that the definition of ‘higher education’ is not straightforward; in particular ‘a course is not necessarily a HE course because it is provided by, or under arrangement with, an institution within the HE sector’, see [82].

¹² It is obvious that the test for when a LA has to carry out an EHC needs assessment is not necessarily the same as the test for when it needs to provide a young person with IAS.

educational setting that there would be no duty to provide them with IAS under sub-section 1. Indeed the potential for a young person in employment to be lawfully excluded from access to IASS under sub-section 1 seems to me to be vanishingly small, given the fact that part time further education can run alongside employment.¹³ It may also be that a young person in employment still has ‘special educational needs’ so as to remain a young person for whom the LA is ‘responsible’, for the reasons given at para 22 above in relation to higher education.

26. I have considered para 9.201 of the CoP, which states that ‘The circumstances where a local authority is no longer responsible for the child or young person include where...[a] young person aged 16 or over leaves education to take up paid employment (including employment with training but excluding apprenticeships), [or t]he young person enters higher education’. However this paragraph of the CoP is in the section dealing with ‘Ceasing an EHC plan’. I am therefore not convinced that this section offers any real guidance on the responsibilities of IASS – and in any event I do not see how it can be said that leaving education to take up paid employment can *per se* exclude a young person from the remit of an IASS, for example if there is a prospect that they may wish to continue further education alongside this employment in the foreseeable future.

27. As such it may make no sense for a LA to seek to exclude any young person from access to IAS. For such an exclusion to be lawful the LA would first need to be satisfied that the young person was not disabled.¹⁴ If my interpretation of sub-section 1 is correct, the LA would also need to be satisfied that there was no realistic prospect that the young person may require special educational provision in a further education setting. Furthermore it may simply be that all young people attending university or in employment can have ‘special educational needs’ so as to trigger the LA’s sub-section 1 duty. It may well therefore be more cost-effective and straightforward for the LA to simply offer

¹³ ‘Education’ includes both full time and part time education, see section 83(4).

¹⁴ Because if the young person is disabled they are entitled to advice and information on matters relating to their disability, see sub-section 2.

IAS to any young person who seeks it. There is no doubt that the LA has a power to offer IAS to any young person, if necessary relying on the general power of competence in section 1 of the Localism Act 2011¹⁵, even if it does not have a duty to do so.

28. Finally it is important to keep in mind the purpose behind section 32. In legislating in this regard, it seems to me clear that Parliament intended a broad offer of advice and information to all those engaged in the SEND system who needed or may need it. A restrictive interpretation of the duties in section 32 would therefore seem to me to go against the intention of Parliament, as well as against the language of the statute for the reasons set out above. See also section 19(c), which requires LAs to have regard to ‘the importance of...the young person being provided with the information and support necessary to enable participation in [relevant] decisions’. This duty is not restricted to those young people for whom the LA is formally responsible and is discharged by the provision of IASS.

Confidentiality

29. For the reasons set out above I therefore advise that:

- a. IASS must provide advice and information to all disabled young people on matters relating to their disabilities.
- b. IASS may not strictly have to provide advice and information on matters relating to their special educational needs to young people who are attending higher education or are in employment. However the IAS duty may still be owed to some or all of this group, as discussed above.
- c. The group of non-disabled young people attending higher education or in employment who seek IAS from an IASS is likely to be very small and it may well be simpler and more cost effective for IASS to offer a full range of services to all young people who may want them, even if they are not strictly obliged to do so. Such an approach would also avoid the

¹⁵ ‘A local authority has power to do anything that individuals generally may do.’

possibility of a complaint or legal challenge against the IASS and its LA and would in my view be in keeping with the purpose of the legislation.

30. I hope this advice is helpful in allowing IASSN to provide guidance to its members on this important issue. If I can provide any further assistance please contact me in chambers.

Dated 8 February 2018

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