



**"The Lamb Inquiry - Securing Better Outcomes for Children and Young Adults with Special Educational Needs"
and
Education in Colchester and North Essex - how does this affect you?**

Seminar Notes

We would like to thank all those who attended this seminar on the 10th March 2010 and who put forward their views and questions. As we covered a large range of topics we thought it would be of use to you if we provided detailed notes from the seminar. Should you have any questions regarding these please do not hesitate to contact:: **Samantha Hale** by telephone (01206) 835230 or by email to: **education@fjg.co.uk**.

What is the Lamb Inquiry?

The aim of the inquiry was to look at the current SEN system with particular focus on parental confidence in that system and how this can be improved. In order to achieve the aim the inquiry focused on:

- The information available to parents who have children with SEN and/ or Disabilities, in particular information regarding their rights, what they are entitled to and where to go for further advice
- The quality and clarity of statements, which we considered in detail later in the seminar
- The inspection and accountability of the current SEN system at every level
- The impact of the changes to the Tribunal System on parental confidence.

The changes to the system came into effect on November 2008 when the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chambers) Rules 2008 came into force. As a consequence to this the Tribunal's procedures changed to try and make the system easier for parents to access but it is arguable that the system is now more complex and harder for parents to access. In addition to this the Tribunal changed its name from the Special Educational Needs and Disability Tribunal also known as SENDIST to the First-tier Tribunal (Special Educational Needs and Disability) also known as SEND.



Who took Part in the Inquiry?

Ed Balls (Secretary of State for Children Schools and Families) asked Brian Lamb (Chair of SEN Consortium RNID) to chair the inquiry. He produced 3 interim reports prior to the final report, which replaced all previous reports. It is this final report that we focused on in the seminar.

8 local authorities took part in various projects during the academic year 2008/09. These local authorities were:

- Blackburn with Darwen
- Wolverhampton
- North Tyneside with Sunderland
- Portsmouth
- Kent
- Newham
- Oxfordshire
- Durham

Each of the above local authorities was given £10,000 to £40,000 to fund each project and were asked to monitor and evaluate changes in parental confidence throughout the projects. These local authorities are now demonstrating how to achieve change to the current SEN system through the recommendations that Brian Lamb made following the inquiry. Therefore it is hoped that parental confidence in the system will be increased in these areas.

In addition to the projects carried out by the local authorities the following also took place:

- A web survey, which was completed by 400 students, 1941 parents, 544 school staff and 516 professionals working with children, schools & families
- Stakeholder events took place during July 2009
- A kids survey was conducted to obtain children's views of the current system
- Visits to parent groups including one in Romford



The results of the Inquiry stated that there was:

'A Clear message that parents need to be listened to more and the system needs to be more ambitious for their children' (Page 1)

and that:

'The system needs to feel more like one where everyone is on the same side'.
(Page 6)

In addition to this Brian Lamb argued that the:

'Current framework was not at fault but rather the failure to comply with both the spirit and letter of the framework'. (Page 6)

In Brian Lamb's final report he makes 51 recommendations to improve the current SEN system and increase parental confidence. He considered that most of these recommendations are already in place with the best schools and local authorities.

However it is not possible for even the best schools and local authorities to already have in place the half a dozen recommendations that we focused on in the seminar. These are considered in more detail below.

Recommendation 20

'The DCSF commissions and promotes a dedicated independent advice line for parents of disabled children and children with special educational needs'.

The DCSF currently has a number of advice lines; however these are not well known or targeted specifically at this type of advice. None of these current advice lines have the capacity to meet such a demand that the proposed advice line would create.

An implementation plan published by Ed Balls on the 24th February 2010 stated that the first phase of this dedicated and independent advice line would be launched in April 2010.



Although it is definite that the first phase will be launched in April 2010 I have the following concerns:

- We do not know when the further phases will be launched
- In order to launch the service fully and nationwide they will need to ensure they have the manpower to provide this service because if published well, demand could be high for this service.
- In order to increase parental confidence this advice line will need to be manned by persons with specialist knowledge of not only education law but the relevant policies and guidance. In addition to this they will need to have a good understanding of the broad range of SEN and Disabilities and the impact of these on the child and their family's lives.
- There is a chance that parents will not consider such an advice line as independent because the DCSF is a governmental department. This is fundamental to increasing parental confidence but I can foresee that as with Parent Partnerships, parents will not consider them to be independent. Therefore they may choose not to use the advice line.

Recommendation 29

'Parents have a right of appeal where the local authority decides not to amend a statement following an annual or interim review'.

I consider this recommendation to be crucial in reforming the current SEN system and increasing parental confidence. This is because parents will often use these reviews as a platform to try and have amendments made to the statement. In particular, parents are often under the impression that if they have expert support and/ or the backing of the school for amendments to be made, the local authority cannot refuse them. However they can refuse them, and the parents currently have no right of appeal to SEND against this refusal to amend the statement at a review.

Parents only have the current right of appeal to SEND for the following:

- Refusal to carry out a statutory assessment or a statutory reassessment
- Refusal to make a statement following a statutory assessment
- Parts 2, 3 & 4 when a final statement is issued
- Refusal to amend a statement following a statutory reassessment
- Refusal to amend Part 4 of a statement, when the amendment requested is in accordance with Schedule 27 of the Education Act 1996
- Cease to maintain the statement



Please note that all these above appeals must be lodged with SEND within 2 months of the date of the decision in writing triggering the right of appeal. With the issue of a final statement, the right of appeal will run from the date of the covering letter that should be sent with the final statement.

Although there is no current right of appeal against the refusal to amend a statement following a review we discussed other potential ways of trying to get the statement amended. The first is to request a statutory reassessment and if the local authority refuses this the parents will be given a right of appeal to SEND purely against this refusal.

If the local authority carries out a statutory reassessment but refuses to make amendments the parents will be given a right of appeal to SEND not only against this refusal but if the Tribunal decides that the statement should be amended they will also decide what amendments should be made. However this can be time consuming and it might be that through certain tactics that the statement could be amended further. For information regarding these tactics we recommend parents contact us.

The good news is that it is hoped that there will soon be a right of appeal for parents against the refusal to amend the statement following the review. Currently this right of appeal has been inserted into the Children, Schools and Families Bill, which is due to move to the Committee Stage at the House of Lords.

Recommendation 48

'The exceptional funding scheme for providing legal aid for Tribunal Hearings is reviewed, with key stakeholders, and more widely publicised. If the re-launched scheme does not increase access, parents who meet the financial criteria should have legal aid for representation at a Tribunal Hearing.'

This recommendation has been made as there is a limitation under the Legal Help Scheme, which prevents us from providing representation for parents who are publicly funded. This is a major concern especially for those parents who have their own SEN or disabilities or where English is not their first language.

Brian Lamb refers to the NatCan Report in his inquiry, the findings of which state the following:

'Parents who could not afford to hire legal help and were approaching a date for a Tribunal hearing expressed concern that they would not be able to represent themselves adequately and suspected that legal representation would stand them in better stead to achieve a successful outcome. Indeed, those parents who were able to employ a solicitor, and perceived it to be a necessary part of preparing for a Tribunal hearing themselves, questioned the parity of a system where this was the case.' (Page 82)



The changes to the Tribunal system explained earlier were meant to make it easier for parents to pursue an appeal to SEND by themselves. However an increasing number of cases being heard at Tribunal are due to issues of law that are under contention and not issues of fact, which an unrepresented parent is unlikely to be able to argue successfully by themselves. In addition to this the Tribunal hearing is meant to be informal but it is still stressful for parents, and this level of stress will be greatly increased for the unrepresented parent.

Although we are currently not able to represent parents at a Tribunal hearing under the Legal Help Scheme we are still able to assist them. For instance we can lodge their appeal and advise and assist them with the rest of the appeal process in preparation for the hearing, such as submitting further representations, assisting with case management, any legal issues and working documents where needed. From then on we will look to transfer the case to a charity for free representation and will work with the representative and advise them in advance of the hearing to ensure a smooth transfer of the case to them.

Recommendation 51

'The reasonable adjustment duty in the Disability Discrimination Act is amended to remedy the exclusion of schools from the requirement to provide auxiliary aids and services.'

This recommendation has been made following the increasing trend by local authorities to delegate funding for SEN directly to the schools. Local authorities will then use this as an excuse not to state a child and some local authorities have told parents they no longer state children. This is wrong as local authorities still must issue a statement for children whose needs cannot be met within the resources available to the school.

The concern with the delegation of funding to schools is that they have a weak duty 'to use their best endeavours' to support pupils but are exempt from providing auxiliary aids and services under the Disability Discrimination Act 1995.

In practice this recommendation could potentially fill the gap in meeting the practical needs of disabled children as well as providing parents with a legal remedy if the school does not make reasonable adjustments to provide these auxiliary aids or services. This remedy would be by way of a claim to SEND for disability discrimination. Currently claims for disability discrimination cannot be made for this as schools are exempt from providing auxiliary aids and services.

It is worth noting that in 2007/08 only 145 claims for disability discrimination were registered at SEND. One person might argue this is a sign that discrimination does not happen. However I consider this to actually be a sign that parents are just not pursuing claims because they are hard to prove and/ or they do not want to risk rocking the boat with the school for either this child or a sibling by pursuing a claim. In addition to this claims must be made within 6 months of the date of the last act of discrimination so sometimes parents will leave it too late to make a claim.



Recommendation 11

'The Statutory Guidance on the role of Behaviour and Attendance Partnerships includes addressing the over-representation of disabled pupils and pupils with SEN in exclusions'.

Recommendation 12

'The DCSF commissions National Strategies to work with local authorities to reduce SEN exclusions focusing first on local authorities with the highest levels of SEN exclusions'.

Exclusions and Recommendations 11 & 12

Both recommendations 11 & 12 focus on exclusions, which are a major problem for children with SEN. To put this problem into perspective we looked at the following statistics taken from the DCSF regarding exclusions in the academic year 2007/08:

- Children with SEN are over 8 times more likely to be permanently excluded than pupils without SEN
- In every 10,000 pupils 33 who had statements of SEN and 38 pupils with SEN who did not have statements were excluded. This compares to;
- Only 4 pupils without SEN in every 10,000 who were excluded
- Out of these pupils who were excluded 30.8% of permanent and 23.2% of fixed term exclusions were due to 'persistent disruptive behaviour' which is consistent with some SEN, such as ADHD. In addition to this disruptive behaviour is also a sign that a pupil who has SEN is frustrated in their educational setting

These statistics are worrying particularly as the Improving Behaviour and Attendance Guidance on Exclusion from Schools and Pupil Referral Units' paragraph 64 states:

- *'only in the most exceptional circumstances should a child with a statement be permanently excluded'*
- *'schools should make every effort to avoid excluding pupils on School Action or School Action Plus'*
- *'Instead schools should try every practical means to maintain the pupil in school'.*



This means that exclusions should be a last resort for these pupils.

In order to keep exclusions low National Strategies have identified the following factors:

- Schools should have high expectations for all pupils and create opportunities for all pupils to develop social and emotional skills
- Schools should focus on early intervention and engaging with parents
- More schools should have 'no exclusion policies' meaning that regardless of what a child has done they will not be excluded.

Statements of SEN

20% (1,656,000) of children have SEN and 2.7% of these children have a statement of SEN. This figure dropped by 0.2% in recent years largely because of a tendency on the part of local authorities not to statement children but instead keep them on School Action or School Action Plus. It is likely that a large number of these pupils kept on School Action or School Action need a statement of SEN as their needs are currently not being met. However, not all parents are fighting to try and get their child a statement, the main reasons being that either they are not aware of their rights or that they see no point in doing so as they have no confidence in the system.

The following quote has been taken from the Lamb inquiry in reference to statements of SEN:

'The majority raised a wide range of issues about their general quality and the extent of which they were fully compliant with the requirements. There were also concerns about their overall intelligibility' (Page 63).

This is another key difficulty with the current SEN system i.e. even when a parent gets a statement of SEN for their child it might not be worth the paper it is written on. Local authorities have a duty to specify and quantify the provisions in the statement but usually do not do this adequately. Unfortunately many parents will not realise this or the importance of this when the statement is first issued as they are usually so happy or relieved that one has finally been issued. Therefore they will not seek legal advice to see what amendments can be made whilst they have a right of appeal to SEND (within 2 months of the date of the covering letter attached to the final statement). It is often months or even years after this right of appeal has been passed that some parents will then discover how worthless the statement is.

An example of this is a child who has communication difficulties and a provision in Part 3 states 'they need access to speech and language therapy'. In fact what this child needs is weekly direct speech and language therapy for 20 - 30 minutes each session. It is important to have this specified and quantified in the statement so that if the local authority does not provide this then the parents will be able to pursue Judicial Review, (the legal remedy for the failure to implement the provision within a



statement of SEN). However this would be virtually impossible to pursue when the provision states 'access to speech and language therapy' as the local authority could argue that they are implementing this provision if the child is assessed once a year by a speech and language therapist.

Education in Colchester and North Essex

There is a vast range of difficulties that parents might be facing with their child's education or that post 16 year old students face. The following issues are particular education issues that parents in Colchester and North Essex are likely to be experiencing at the moment:

Exclusions

Exclusions are an all year round problem and there is likely to be an increase of exclusions after the Easter holidays as some children with SEN will take longer to settle back into school and routine and are likely to display 'disruptive behaviour'.

For an exclusion to be considered lawful at local authority maintained schools parents must be notified of this in writing. This written notification should explain the type and length of the exclusion, the reason, the parent's right to make representations against the exclusion and appeal to an independent Appeal Panel. Appeals to an independent appeal can only be made if a child is permanently excluded. We can assist parents with these exclusions and any concerns regarding the level of education the child receives whilst they are excluded. However, not all parents receive this notification if their child is excluded and these exclusions are considered unlawful.

Schools sometimes tell parents that it is better not to formally exclude their child (unlawful excluding) as it will not remain on the child's school record. However this then takes away the parents right to make representations and in case of a permanent exclusion to appeal to an Independent Appeal Panel. In addition to this, unlawful exclusions often lead to the child's education being disrupted and the child will often not receive the education they are entitled to. It is crucial that if a child is unlawfully excluded that the parent seeks immediate legal advice.

Transfer of Statements

For those children who have a statement of SEN who are due to transfer to junior or secondary school in September 2010, the local authority should have issued a final [amended] statement by 15 February 2010. If a parent has not received this by now then they should seek legal advice immediately.



When the final [amended] statement is received parents have a right of appeal to SEND against Parts 2, 3 & 4 but this must be lodged within 2 months of the date of the covering letter, which must be sent with the final [amended] statement. It is vital that parents seek legal advice regarding the contents of the statement for the reasons explained earlier regarding the implementation of statements and the affect an inadequately worded statement could have on a parents remedy against this.

School Admissions

Parents with a child due to transfer to secondary school in September 2010 should have been notified in writing of the school place they have been allocated by 01 March 2010.

Parents with a child due to transfer to primary school in September 2010 should have been notified in writing of the school place they have been allocated by 01 April 2010.

If a child isn't allocated a place at the parent's preference of school, the parents must be notified of their right to appeal to an Independent Appeal Panel. If parents wish to appeal we can assist with this and strongly recommend that they seek assistance with this. We can advise parents on the arguments they should use in their reasons for appeal to satisfy the balancing test, which the appeal panel will need to apply. In addition to this if a parent has an infant class size appeal we can advise them on the exceptions that allow this limit to be exceeded and arguments to use in order that these apply to their case.

Summary

What is the Lamb Inquiry?

An inquiry into parental confidence with the current SEN system

Who took part in the Lamb Inquiry?

8 local authorities, parents, schools, professionals and children

The Lamb Inquiry Recommendations

There were 51 recommendations and we identified 6 in the seminar, which I consider crucial to improving the current SEN system and increasing parental confidence

The Lamb Inquiry, Exclusions and Statements of SEN

Particular recommendations have been made in reference to both lowering the number of SEN pupils who are excluded and improving the quality of statements of SEN.

Education in Colchester and North Essex

The education issues parents are likely to be experiencing all year round are exclusions and at this time of year difficulties following the issue of transfer statement and school admissions.

