

**Welcome to Landmark Chambers’
‘Special Educational Needs during the COVID-19
crisis’ webinar**

The recording may be accessed [here](#).

Your speakers today are...



Fiona Scolding QC (Chair)

Topic:
Safeguarding in
lockdown



Carine Patry

Topic:
SEN Video Hearings:
Practical Steps and
Tips



Leon Glenister

Topic: The
Coronavirus Act
2020 and SEN
provision

The Coronavirus Act 2020 and SEN provision



Leon Glenister

The Coronavirus Act 2020 and SEN provision



Leon Glenister

Coronavirus Act 2020 overview

- Section 38 and Schedule 17 of the 2020 Act permits the Secretary of State to give a notice which disapplies or modifies certain duties.
- Secretary of State may by notice disapply:
 - Section 43 CFA 2014 (duty on schools to admit if named in EHC Plan) (Sch 17, para 5(5)(g))
 - Section 44(1) CFA 2014 (requirement for annual review) (Sch 17, para 5(5)(h))

Coronavirus Act 2020 overview

- Secretary of State may by notice modify duties to a “reasonable endeavours” duty (Sch 17, paras 5(1) and (6):
 - Section 19 EA 1996 (exceptional provision of education in PRU or otherwise than at school)
 - Section 508A to 508F and Schedule 35C EA 1996 (school transport duties)
 - Section 42 CFA 2014 (duty to secure special educational provision in accordance with EHC Plan)

The power to issue a notice

- A notice must not exceed a period of a month (Sch 17, para 5(7)), although a second notice could be issued (Sch 17, para 5(11)).
- Notice must state “why the Secretary of State considers that the issuing of the notice is an appropriate and proportionate action in all the circumstances relating to the incidence or transmission of coronavirus”.
- Notice must take into account relevant considerations and be proportionate, particularly in light of article 2 protocol 1 (right to education), discrimination

Has anything been disapplied or modified?

- Not yet, but see DfE SEND Risk Assessment Guidance (19 April):

“At present the law in force in relation to EHC plans is unchanged, although we recognise that there will need to be some extra flexibility and are taking steps to deliver that as soon as possible. The Coronavirus Act 2020 includes temporary emergency powers to enable the Secretary of State, where appropriate and proportionate, to disapply or modify legal requirements under the Children and Families Act 2014. The powers have not yet been used. We are currently gathering evidence to understand the situation on the ground to inform our approach. To allow more flexibility, we also anticipate making temporary changes, where appropriate, to the Regulations that set out some of the timescales for the EHC plan process. At the point at which the law changes, we will provide formal guidance.”

Current situation

- “Ultimately, under the current legislative framework it is for parents/carers or a young person (or the corporate parent, where applicable and the child is in the care of the local authority) to decide whether the child or young person should continue to go to school or college.”
- But: “Although the duties on a local authority and any health bodies to secure provision under an EHC plan currently continue, in reality there may be times when it becomes very difficult to do so in practice...Decisions on how provision is delivered should be informed by relevant considerations including staffing availability and risk assessments.”
- There should be risk assessment of options: see DfE guidance.

What are reasonable endeavours?

- Need to be practical – what is realistic and achievable?
- Consider carefully policies adopted by LAs, blanket policies which do not consider individual circumstances unlikely to be lawful
- Delivery through remote learning, remote therapies, personal budgets.
- Particular issue for students with residential provision that cannot be delivered.

Potential challenges following exercise of notice

- Individual challenges to provision and LAs not using best endeavours
- Challenge to LA policies on what “reasonable endeavours” means
- Challenge to notice itself either in its entirety, or in respect of individual circumstances such as for residential settings, or children who are looked after by the local authority.

SEN Video Hearings: Practical Steps and Tips



Carine Patry

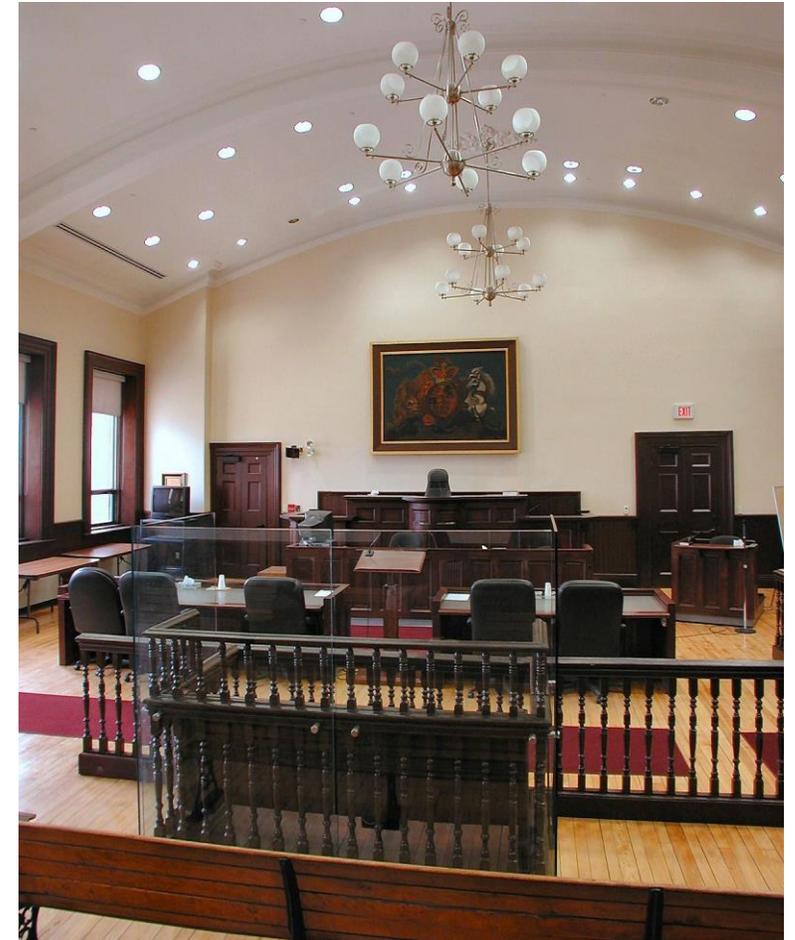
SEN Video Hearings: Practical Steps and Tips



Carine Patry

This is going to be the format of my short talk:

- Practical steps BEFORE the hearing
- Practical steps DURING the hearing



Practical Steps Before the Hearing: How Will I Know How the Hearing is to be held?

- The FTT (HESC Chamber) are holding hearings via their own video conferencing facility
- You will receive notification from them and a link to their website with the right link
- And a detailed note with guidance on how to conduct the hearing (read this!)
- You, client and witnesses do not need to download any special apps or software. You should just be able to connect, as long as you have wifi/data

Practical Steps Before the Hearing: What Else Do I Need?

- If you only have the bundle electronically, having a second device or screen is absolutely invaluable – then you can see everyone and still look at the bundle/working document at the same time
- If you need to communicate with anyone during the hearing itself, setting up some sort of Whatsapp group, email group or something else is useful. There is a ‘chat’ function on the website during the hearing, but you are bound to mistakenly send a message to the judge/panel by mistake so avoid this!
- Make sure you have a quiet room with a neutral background.

Practical Tips Before the Hearing: Preparation

- Obviously, you will not meet your witnesses, clients or the other side outside court as usual
- Schedule a conference in advance, and I also find it useful to touch base just before the hearing starts
- The Working Document will need to be discussed as far as possible in advance with the other side, as there is no last minute negotiation
- Make sure last minute documents are submitted as early as possible

Practical Tips During the Hearing

- Perhaps the most important thing: don't be self-congratulatory about making the technology work, or become less formal because you are in your living room. This is still a real case, about a real child and litigants in person will be just as keen for the case to be taken seriously.
- There is a useful 'message/chat' function which is useful when the WD is being discussed with the judge – you can type out a new form of wording into it and then all the parties can see it
- Mute yourself when you aren't speaking: this cuts out background noise.

Practical Tips During the Hearing

- It looks a bit strange, but putting your hand up if you want to say something when it is not your turn to speak is more effective than using the chat function
- The hearings work well and judges are still as structured. Only issues tend to come with connectivity
- Personally my biggest bugbear is not being able to talk properly with the other side during breaks – much can be agreed then. Set up a way to speak!

Safeguarding in lockdown



Fiona Scolding QC

Safeguarding in lockdown



Fiona Scolding QC

Issues arising from lockdown

- Responsibility for safeguarding whilst schools are closed
- Online safety and remote learning
- Protecting vulnerable children – the role of the school
- Bullying and exploitation/abuse during lockdown

Statistics – overview

- When schools were closed in March 2020, the following children were permitted to continue learning in a school setting (NB not necessarily their own school, but a setting) . Of relevance today are:
 - (a) Those with EHC plans
 - (b) Those who are vulnerable – with a social worker
- Govt’s own statistics estimates only 5% of ”vulnerable children” are attending school”
- The Secretary of State wrote a letter to all schools and LA’s last week identifying this as a problem and encouraging schools to try and get these children into school or in their line of sight.

Children's Commissioner – April 2020

- Publication of “We are all in this together”²⁵ April 2020: makes for sobering reading: designed to try and capture data on how many children there are at risk, and highlight those at risk.
- (a) Highlights that nearly all the places that vulnerable children are picked up (school, GP, youth centres, nurseries) are closed.
- (b) Identifies that those in overcrowded accommodation, with parents with their own issues, who look after others
- © Those without internet access
- (d) Those with SEN but without a plan (big variation in the country as to the numbers with plans).

Safeguarding processes

- Govt produced Safeguarding in schools guidance on 27 March 2020
- Identifies the need to keep the DSL /safeguarding policies and procedures in place and operating to a degree
- Identifies the need for those running cluster or hub schools to have adequate processes
- Identifies the need to ensure online safety in remote learning.
- Applies to all schools and FE colleges.

Online safety – for schools

- Need for schools to run secure and safe systems: guidance on what appropriate looks like (available on gov.uk website)
- UK Council for internet safety provides guidance on what is safe
- Also UK Safer Internet professional online safety helpline: 0344 381 4772
- Each school should have a remote learning policy devised and looking at relevant guidance
- UK Safer Internet centre has guidance on safe remote learning
- London Grid for Use of videos and livestreaming.
- Make sure signpost Childline, UK Safer Internet Centre and CEOP .
- Safeguarding children – Teacher toolkit
- Children’s Commissioner has a helpful – Tips and tricks using Zoom

Online safety – parents

- Safety online largely involves parent being aware of issues around e-safety.
- IICSA research recently published showed that schools considered that parents often did not understand or were not aware of e-safety rules.
- Places to look:
- Internet matters: internetmatters.org – provides help with online issues, and on how to set controls
- London Grid for Learning: LGFL.net – provides flyers and information and learning resources about remote issues – such as animations to stop children thinking its OK to get undressed on camera
- Net – aware: NSPCC support – net-aware.org.uk – about social networks, apps and games

Online safety parents (2)

- Thinkuknow – thinkuknow.co.uk – run by the national crime agency: advice about staying safe online – related to age, and specific help for parents/carers
- Uk safer internet centre: www.saferinternet.org.uk
- Children’s commissioner has a guide to staying safe online for parents – a kit which can be downloaded.
- Also provides screen guidance – digital five a day kit

Online safety – children

- All the resources above provides guides for children
- Children's guide to staying safe online from the children's commissioner – childrenscommissionerl.gov.uk/coronavirus/digitalsafety-and-wellbeing-kit is also helpful

Online safety – children with SEN

- Children with SEN may have particular difficulties with online communication: not being able to follow the often unspoken rules about social communication.
- However, it can also be an excellent tool for greater socialisation etc.
- The NAS produces specific resources on e-safety for those with Autism

Children with SEND

- SEN risk assessment advice : issued by the govt to schools – SEND risk assessment guidance (19 April 2020)
- Each child should have a risk assessment as to whether or not it is safer to be at home, or to be in school
- Residential schools should still be open and keeping children safe where possible
- Govt expectation that some services can be moved from education setting to home, ie online sessions, phone support, provision of equipment
- The Council for Disabled Children produces and excellent guide for parents with LD and autism as to how to manager not just school, but other resources – www.councilfordisabledchildren.org.uk

Supporting vulnerable children

- Guidance published by govt on 19 April 2020
- Identifies that those with a social worker (but without EHC/SEN) should attend school/other provision unless it would be a risk to their health: there should be follow up if there is absence.
- EHC Plan children should have a risk assessment.
- For others – those on the edge of care – should be encouraged to attend school.
- DSL should know and review their lists of vulnerable people, and share with local authority.
- Have school (with others) keep in touch, e-mail, phone, letter , visit.
- LA's should make transport provision available for children to attend.

Things to think about

- You can and should still report possible abuse to the LADO – they are trying to run a service, and are worried that referrals have gone down significantly.
- Think about online bullying/peer on peer abuse. This can still be dealt with by the school even if it is all remote.
- Sexual exploitation online – have relevant filters: tell your children about online harms: identify what is appropriate and not appropriate.
- Criminal exploitation – children at home with nothing to do – much greater risk of induction into criminal gangs/county lines /human trafficking.

Q&A

We will now answer as many questions as possible.

Please feel free to continue sending any questions you may have via the Q&A section which can be found along the top or bottom of your screen.

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Thank you for listening

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