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**Vicky Ford MP**

Parliamentary Under-Secretary of State for Children and Families

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Anne Longfield

Children's Commissioner for England

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28 May 2020

Dear Anne,

Thank you for your letter of 12 May, outlining your concerns about recent changes to the duties of local authorities (LAs) in relation to education, health and care (EHC) plans.

In our response to the current coronavirus (COVID-19) outbreak, we have been doing all we can to prevent the spread of the virus, to help keep children and young people safe and to support public bodies to focus their efforts on protecting the most vulnerable. As part of this, the temporary changes to the law on special educational needs and disabilities (SEND) are to strike the right balance between:

- the needs of children and young people with SEND to be protected and receive the right support in a timely way; and
- managing the significant demands on LAs and health bodies to respond to the outbreak.

We have made temporary changes to two aspects of SEND law, through:

- modifying the duty under section 42 of the Children and Families Act 2014 to secure or arrange the provision set out in sections F and G of an EHC plan. The Coronavirus Act 2020 allows for the existing duty to be modified to use 'reasonable endeavours' to secure or arrange this provision by the issue of a notice. There is no power under the Act to modify this duty in any other way, so we could not now modify that through a notice to take 'all practicable steps'; and
- amending the Regulations that set out various timescales for SEND processes, principally for EHC needs assessments and plans.

We have also, as you mention, issued detailed guidance on the changes, which we drew up working closely with a range of stakeholders, including representative bodies of LAs and parents of children with SEND and a number of specialist SEND organisations. This is available at: [tinyurl.com/Y9befY3b](https://tinyurl.com/Y9befY3b). I am grateful for your positive words about that guidance. We are currently preparing an update to be published shortly and your letter has been a very helpful input.

## **Keeping the impact of the changes under review**

We have been systematically gathering evidence on the extent of the pressures on LAs and health bodies and are working with SEND organisations to understand the continuing impact on those with SEND and their families. This is helping to underpin our consideration of how long the modification of the section 42 duty should be in force. We continue to monitor closely what is happening on the ground, principally through our regional SEND Adviser team and seeking specific intelligence from stakeholders, including LA, parent and SEND bodies.

It would be premature at this stage to speculate over how long the temporary changes to the law will need to be in place. There is, as you say, a risk of a backlog of cases building up and we will be alert to this. However, our intention is to support local areas in their COVID-19 response to ensure that, as far as possible, the EHC plan system is delivering effective support for children and young people during the outbreak. We are committed to ceasing these temporary changes to the law at the earliest opportunity.

We agree with you that these changes have significant implications for many children and young people with SEND and their families. We built various safeguards into the legislation to help protect their rights, such as the duty to review the effect of the changes to the Regulations. In addition, a notice issued using the powers in the 2020 Act can only be in force for up to a month. Such safeguards help to ensure that the impact on children, young people and their families is proportionate and kept under review.

You ask us and DHSC to publish an assessment of the impact of the changes to the law on children's rights. As you know, we factor consideration of children's rights into decisions over relevant legislation and are confident that we have done so with these changes. We also conducted Equality Impact Assessments on both sets of law changes, a copy of which I enclose. Similarly, we will ensure children's rights are factored into the decisions we will need to take over how long the temporary changes to the law should remain in force. If, having studied our analysis, you still have concerns then we would be very happy to discuss these.

You suggest that we should require LAs and CCGs to report to us and others on their use of the reasonable endeavours duty. It is for LAs and their health partners to apply this duty and to be held to account through the usual redress processes where they fail to do so. The change in the law may result in the same provision being delivered in different ways; or other provision needing to be made instead.

A particular issue with the reasonable endeavours duty may be that much of the education and health provision in EHC plans can only be delivered when the child is in school: for example, daily individual input to support literacy development from appropriately trained adults or daily specialist nursing support. The vast majority of children and young people with plans are currently at home. With over 390,000 plans currently in place, we consider it would be an unmanageable burden on LAs, health bodies and schools or other education settings to be required to report in the way you suggest; especially as we already know that it will be rare for the provision to be the same as before for as long the majority of children and young people are unable to attend their school or other usual setting.

Instead we have put in place arrangements that we believe are more proportionate and that yield intelligence on which we can act: particularly regular conversations with every LA SEND leadership team, including health representatives, focusing on their response to the outbreak, with lines of enquiry about this issue. In this way, we are able to monitor the implementation of the temporary changes to the law and provide support and challenge where necessary.

As we make clear in our guidance, the temporary legislative changes do not absolve LAs and health commissioning bodies of their duties over putting EHC plan provision in place. Our guidance includes illustrative examples of alternative arrangements that it might be reasonable to put in place, based on existing good practice. We will continue to do all we can to help ensure that LAs and health commissioning bodies are using their reasonable endeavours to provide effective support, something that I am sure you would similarly regard as a high priority.

### **Driving up the quality of EHC plans and the timeliness of their being issued**

I note your concerns that LAs' performance over the timeliness of the issue of EHC plans and the quality of those plans even before the temporary changes to the legislation. As you will appreciate, we have arrangements in place to support and challenge LAs and health bodies in meeting their duties under SEND legislation. Our SEND Advisers have been working with LAs to support them in their response to the COVID-19 outbreak, but also to seek assurances on their statutory duties. We continue to work with partners to support the identification and sharing of effective practice and are using this to enhance further our delivery support offer to local areas and to challenge them where necessary.

### **SEND Review**

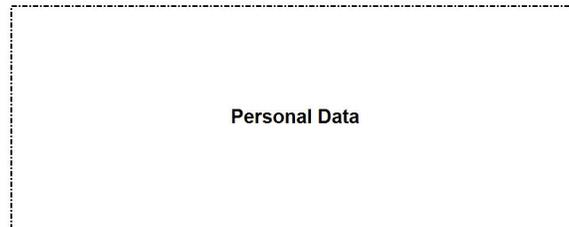
Looking further ahead, I remain as committed as ever to strengthen the SEND system. That is why the SEND Review continues to be a priority for me and this government. It is clear the outbreak presents both challenges and opportunities to the SEND system. The SEND Review will take into account the best of what we know about this new context, to ensure a system of support for those with SEND works best for all families.

### **Working together**

Finally, as you know we have some concerns about the accuracy of the detailed note that you attached to your letter. Departmental officials have arranged to discuss these concerns with your team. Whilst recognising your independence, can I stress that officials are, of course, always ready to fact check any document should that be helpful.

I hope that the content of this letter offers some reassurance that these temporary measures are necessary in light of this outbreak; but have been made in such a way as to ensure that children and young people with SEND and their families continue to be a priority for support from LAs and health bodies.

Yours sincerely,



**Vicky Ford MP**  
**Parliamentary Under-Secretary of State for Children and Families**

Enclosure: Extracts from submission about the Amendment Regulations, dated 9 April 2020.