STEVE BROACH JOINS 39 ESSEX CHAMBERS

Chambers is delighted that Steve Broach has joined our public law team. Steve is a specialist public law junior with extensive experience of public law challenges in the Administrative Court, the Tribunal system and in onward appeals. Steve's key area of specialism is in the rights of disabled children, young people and their families. He has particular expertise in the duties owed to this cohort by public bodies across education, health and social care. However Steve has an extremely broad public law practice which also encompasses commercial judicial review and public law challenges to regulatory decisions.

Steve has worked with barristers from 39 Essex Chambers on a number of recent high profile cases, including last year's challenge to the Chancellor of the Exchequer and the Secretary of State for Education in relation to the alleged under-funding of special educational provision (Simone and others), where he acted for the claimants with Jenni Richards QC and Katherine Barnes. Steve is joining chambers to maintain his core public law practice while also developing other practice areas, particularly in relation to the Court of Protection, regulatory work and public inquiries.

Contents

AS FAIR AS POSSIBLE

Fenella Morris QC and Jennifer Thelen

Following on from the Government's announcement that all A level, AS level and GCSE exams were cancelled, we wrote about the options for a fair appeal system for students who were no longer able to rely on the tried and tested exam process for their results.

On Friday, 3 April 2020 the Department for Education released more information as to how students will be assessed in the absence of exams. The key points are:

- Schools will be asked to calculate a *"centre assessment grade"* for each student. The grade is said to be a "holistic, professional judgment" and must:

  "reflect a fair, reasonable and carefully considered judgement of the most likely grade a student would have achieved if they had their exams this summer and completed any non-exam assessment."

- To reach the *"centre assessment grade"* schools will take into account a range of evidence including: mock exams; non-exam assessments; class or homework assignments; other records of each student's performance over the course of study; tier of entry in tiered subjects; for those re-sitting, previous marks; AS results; the school's past performance in the subject; and the performance of this year's students compared to those in previous years. The grade must be reviewed by subject heads and heads of department.

- Schools will also be asked to rank order the students within each of those grades. For example, if there are 15 students in GCSE maths who are assessed as grade 5, they need to be ranked in order from 1 to 15, with 1 being the most secure/highest attaining.

- Where disabled students have an agreed reasonable adjustment in place, the judgment should take into account likely achievement with the reasonable adjustment in place.

- Ofqual will consider only the grade and rank submitted by each school. The Department for Education has explained that *"it is not feasible in the current circumstances for exam boards to standardise the judgements of all teachers across all subject areas before grades are submitted."*

- Once grades and ranks have been submitted, exam boards will carry out a process to statistically standardise the grades between different centres. This process is currently being developed, and consulted upon, by Ofqual.

- The Ofqual process will be designed to address the fact that students from disadvantaged backgrounds are more likely to have their grades under predicted.

- The Government confirmed that students who do not feel their calculated grade reflects their ability will be able to sit an exam as soon as reasonably possible after schools and colleges open again. In terms of the timing of that process, the Government has explained *"[w]hile it cannot be guaranteed in every circumstance, Universities UK has assured us that the majority of universities will do all they can to ensure that such students who take this option are able to begin their course with a delayed start time."*

- Schools will not be held to account with respect to this year's exam data, e.g. by Ofsted or local authorities.

The Government has acknowledged that the process being developed is "as fair as possible". Implicit in that is the acceptance that the process is not at as fair as it should be, and has been, for students:

- It remains unclear how the Ofqual process will – or could – address the risk of under prediction

for those from disadvantaged backgrounds. The heavy reliance on the past performance of the school would seem to point the other way.

- The bulk of the assessment will be done at the school level, by teachers. This shift to a much more subjective system will inevitably disadvantage many students whose abilities are under-assessed by their teachers, whilst running the risk of excessive generosity to others. It also involves assessing those students on work which was never intended to be part of their permanent record.

- It will be very difficult to distinguish, and thus rank, between students where a large number are taking a subject.

- The appeals process is as yet unshaped. A consultation will follow. It has, to date, been described as *"narrow"*. That must follow from the fact that the appeal will only be about what Ofqual does, not what the school does. However, the bulk of the assessment will be done by the school who will grade and rank each student and pass only that information on to Ofqual, leaving the process by which that result is reached untouchable. Further to this, the grades and ranks provided by schools are said to be confidential (although they can be obtained by way of a subject access request after the final assessed grades are reached).

- Schools are permitted, but not required, to take into account additional work provided by students after 20 March 2020. Students with better access to technology to continue to learn and work remotely are in a better position to complete work out of school. Such students are likely to be from more affluent families. Thus, these students will continue to have access to ways to improve their grades, whereas others will not. Further, while schools have been warned to be cautious in interpreting the results of work done at home they are still allowed to take it into account. Thus, the risk remains that some students' grades will be inflated as a result of work done at home, perhaps with more assistance than would have been received in a school environment.

Obviously, the Covid-19 pandemic has led to the taking of many unprecedented decisions, the cancellation of exams being only one. No replacement system was going to be perfect. However, there are real questions raised about the fairness of the process. Perhaps it is not possible, in the time available, to put in place a fairer system. However, the limitations of the system can and should be acknowledged, so as to ensure that students and others can properly respect and rely on these results in their context. This issue is different from the one as to the "status" of the grades – which must remain the same. It is about openly acknowledging the inherent weaknesses of this system, given that the importance of these results for students not just now, but for their whole careers.

For Fenella and Jennie's previous article on the need for a fair appeal system following the cancellation of A Level, AS Level and GCSE exams ("A Fair Appeals System for GCSEs, AS and A Levels in 2020"), please click here.

SEND: REMOVING THE SECURITY?

Steve Broach

The duty in section 42 of the Children and Families Act 2014 is the lynchpin of the statutory scheme for children and young people with special educational needs and disabilities ('SEND') introduced by the Children and Families Act 2014.

Section 42 in fact comprises two related duties. First, it obliges local authorities to secure all the special educational provision set out in section F of the child or young person's EHC Plan. Second, it requires NHS bodies (generally Clinical Commissioning Groups) to arrange all the health provision specified in Plans. However, because section 21(5) of the 2014 Act designates all health (and social care) provision which educates or trains a child or young person as educational provision, the local authority duty is significantly more important in law than the health duty. As such the remainder of this article focuses on the local authority duty.

It is well understood that the section 42 duties are absolute, in the sense that they are not in any way influenced by the availability of resources to implement them. As Sedley LJ said in *R (N) v North Tyneside BC* [2010] EWCA Civ 135 (a case concerning the predecessor duty to the local authority duty under section 42), *"There is no best endeavours defence in the legislation. If the situation changes there is machinery for revising the statement, but while it stands it is the duty of the LEA to implement it."*

It is therefore perhaps unsurprising that there has been a focus on whether it is practicable for the section 42 duty to remain in force during the current public health emergency. For example, it may be said to make no sense to leave a duty in force requiring a local authority to secure small group learning for a child with autism whose school is closed and is presently being kept at home. In this regard it is important to note Sedley LJ's reference in the North Tyneside case to a *"margin of intractable cases"* where the court *"would not make a mandatory order, or more probably would briefly defer or qualify its operation"*. It could therefore be said that it is sufficient for the courts to extend a more generous "margin" to local authorities to recognise the present difficulties with achieving compliance with the section 42 duty.

However the Coronavirus Act 2020 goes further than this, with schedule 17 creating a power for the Secretary of State to make a notice which would have the effect that section 42 is downgraded to a *"reasonable endeavours"* duty. Thus instead of local authorities being required to secure the specified provision unless it were impossible to do so, they would simply have to take reasonable steps to make the provision happen. An obvious concern is that this would disincentivise local authorities from exploring innovative solutions to secure specified provision, such as asking therapists or other workers to go to the child's home to work with the child, or using web conferencing to have therapists support the parents to work with the child where this is practicable but direct working would be unsafe.

However at the time of writing (7 April 2020) the Secretary of State has not made a notice under schedule 17, and so the section 42 duty remains in full force. As such local authorities (importantly, rather than schools) do presently remain required by law to do everything possible to secure the specified provision in every child and young person's EHC Plan. Therefore the security created by section 42 in terms of entitlement to appropriate provision to educate the child or young person remains. Furthermore, before any notice changing this is made, the Secretary of State must be satisfied that it is appropriate and proportionate to do so *"in all the circumstances relating to the incidence or transmission of coronavirus"* and must give reasons for this in the notice. It is to be hoped that the Secretary of State is never so satisfied, not least because this will mean that the current public health crisis never reaches the levels feared which gave rise to this extraordinary power to modify primary legislation through a statutory notice.

SEN & COVID-19: UPDATE ON LAW AND PROCEDURE

Tom Amraoui and Rachel Sullivan

The Coronavirus Act 2020 contains a number of important provisions in relation to the duties on local education authorities in relation to SEND. This article provides an overview of the main changes the Act permits: these changes however are contingent on the Secretary of State issuing a notice under Schedule 17. At the time of writing, no such notice has been issued and the duties on local authorities remain in force in their familiar form.

This article also provides an overview of changes to Tribunal procedure and practice in light of the current situation, including considerations for those conducting remote hearings.

EHCPs

In terms of EHC plans, the Act provides for various changes to the EHCP regime and duties on local authorities. Schedule 17 creates a power for the Secretary of State issue a notice for up to a month at a time:

- Modifying the duty to secure provision specified in an EHCP (s. 42 Children and Families Act 2014) to a duty to use reasonable endeavours, as discussed in detail in Steve Broach's article;
- Disapplying the duty to admit under s. 43 CFA 2014;
- Disapplying s. 44(1) CFA 2014 (duty to undertake annual reviews of EHCPs).

It is important to note that the Act does not provide for these measures to apply automatically – they will not unless and until the Secretary of State issues a notice (which he must take reasonable steps to bring to the attention of those likely to be affected). Until that time, the duties on local education authorities remain unchanged.

It should also be noted that the Act does not affect the timescales laid out in the CFA 2014/ Special Needs and Disability Regulations 2014 (other than s. 44(1)). Normal timescales continue to apply, and failing to meet them may level local authorities open to judicial review. The Government's *Covid-19: Guidance on Vulnerable Children and Young People*[1] does however suggest that the Government is looking to amend the regulations *"to provide for flexibility over matters such as the timescales in EHC needs assessments, and the reviews, re-assessments and amendments processes where particular cases are affected by the COVID-19 situation"*

The *Guidance on Vulnerable Children and Young People* sets out the expectation that local authorities will assess for themselves whether the provision set out in Part F of an EHCP can be delivered at home (so that there is no need for the child to attend school) or whether attendance at an educational setting is still required.

Local authorities will wish to think proactively about whether provision can be offered at home (for instance, whether SALT or OT sessions can be delivered effectively by remote means) to ensure the safety of everyone.

Changes to other provisions affecting disabled children

There are further changes (which also require a notice to be issued) which are likely to be important:

- Modifying the duty under s. 19 Education Act 1996 to secure provision of education if a child is unable to attend school. Again, if a notice is issued this becomes a duty to use reasonable endeavours;
- Modifying the duty under s. 508A – 508F and Schedule 35 Education Act 1996 in respect of travel arrangements to a duty to use reasonable endeavours to discharge the duty.

Again, these changes are dependent upon the Secretary of State issuing a notice, and until that happens the duties continue in force in their original form.

Under s. 19, local authorities are under a duty to make arrangements for the provision of suitable education for children who would be unable to receive education otherwise. This may be for a number of reasons, including illness (exclusion is another common reason). Ss. 508-A-508F create a number of duties, of which the most relevant here are: (a) a duty to make travel arrangements to school in respect of eligible children – this includes, but is not limited to, children with special educational needs; (b) a duty to provide transport for adult learners who have an EHCP. There are also much wider duties, including a duty to promote and publish a strategy for sustainable travel to schools.

Evidently the modification of both sets of provisions may affect many, but it is likely to be of particular importance to disabled children.

[1] https://www.gov.uk/government/publications/coronavirus-covid-19-guidance-on-vulnerable-children-and-young-people/coronavirus-covid-19-guidance-on-vulnerable-children-and-young-people

In particular, when considering this, local authorities should bear in mind that the Equality Act 2010 continues to apply and is not affected by the Coronavirus Act 2020. If there are children in receipt of EHCPs who are assessed as still needing to attend an educational setting, changes to travel arrangements will need to be carefully considered.

Tribunal practice and procedure

There are also changes to Tribunal procedure and practice. Guidance issued on Thursday confirmed that the First-Tier Tribunal (HESC) will move to fully digital working. In practice this means:

- No face-to-face hearings, initially for three weeks as of 23 March 2020; and
- All cases to be dealt with on papers, by telephone or video-link (arrangements to be confirmed by the Tribunal two days beforehand).

The guidance also provides:

- At the conclusion of the hearing, the judge should seek confirmation from the parties that they are satisfied with the way in which the hearing has been conducted and the decisions should record how the hearing was conducted and the parties' confirmation of satisfaction.
- From the 30 March 2020, appeals and claims will be prioritised by the judiciary and consideration given to the use of additional approaches including early neutral evaluation and triaging of cases to ensure that decisions are made proportionately.
- The method of listing in SEND means that *"… we can look at the hearings in that jurisdiction up to the Easter holidays and then take stock of the situation as it develops."*

Consideration therefore needs to be given to practical matters:

- If the hearing is by video-link, test your internet connection before the hearing – and NB that the software is not compatible with Firefox so you will need to use an alternative browser
- If you are set down for a video hearing but are without video capability it will be possible to join by telephone.
- Consider your background, and the fact that hearings take place in private and so you will need to be in a place without interruptions.
- If you have a telephone hearing, consider the strength of reception if using a mobile.
- Witnesses should be available to join throughout the time allotted for the hearing, but if there are multiple witnesses then judges may set times for witnesses to join at the start of the hearing.

For SEN tribunals specifically, the following are also worth keeping in mind:

- Not holding hearings in person will inevitably limit the scope of any last-minute pre-hearing discussions on the working document. The overriding objective still applies, however, so parties should still attempt as best they can to hold pre-hearing discussions in order to narrow the issues in dispute. These will instead need to take place well before the final hearing, either through the exchange of emails, or by teleconference or video-link.
- The standard practice of bringing hard copies of late evidence to the final hearing will obviously not be possible, but e-filing should not be affected. It remains good advice for parties to always make request for changes applications in a timely way, well in advance of the final hearing.
- It remains to be seen how, if at all, the fact that schools are closed will affect the willingness of SEN tribunals to adjourn. It is likely that disruption to normal school routines will cause real difficulties for local authority witnesses, especially headteachers.

NOTTINGHAMSHIRE COUNTY COUNCIL V SF AND SG [2020] EWCA CIV 226: COURT OF APPEAL CONSIDERS WHEN IT WILL BE "NECESSARY" WITHIN S.37(1) CFA 2014 FOR A CHILD TO BE GIVEN AN EHCP

Katherine Barnes

The local authority in this case appealed a decision of the FTT (via the UT) that an EHCP was necessary for a 7-year old boy with ASD, dyspraxia and hypermobility whose needs, the FTT accepted, had been fully identified and were being met by his mainstream school. It was also accepted that the child was making good progress although he had started to show signs of anxiety at school which required monitoring. The key part of the reasoning for the FFT's conclusion was as follows:

> *"[the child] is unlikely to require any additional provision immediately, over and above what is in place, but his provision will require constant monitoring and adapting to manage his anxieties and to develop his skills and for these reasons we have concluded that it is necessary for the LA to make and maintain an EHC plan for him".*

As readers of this newsletter will know, s.21(1) of the Children and Families Act 2014 defines *"special educational provision"* as *"educational or training provision that is additional to, or different from, that made generally for others of the same age in […] mainstream schools in England".* The vast majority of children with special educational needs ("SEN") are provided with special educational provision through s.66 CFA, which requires schools to use "best endeavours" to secure the special educational provision needed. However, local authorities provide a minority of children with SEN with an Education, Health and Care Plan ("EHCP") when the test in s.37(1) CFA is met. In so far as relevant, this provides: *"Where, in the light of an EHC needs assessment, it is necessary for special educational provision to be made for a child or young person in accordance with an EHC plan […] the local authority must secure that an EHC plan is prepared for the child or young person".*

The local authority submitted that the definition of *"necessary"* in s.37(1) could not be met when a child is making good progress and is having their needs met in full by the relevant school. To conclude otherwise, it argued, was inconsistent with the fact that most children being given special educational provision did not have an EHCP. It was also inconsistent with paragraph 9.55 of the Code of Practice which provides: *"a local authority should only consider what further provision may be needed" if "despite appropriate assessment and provision, the child or young person is not progressing, or not progressing sufficiently well".*

Having considered various UT authorities on the concept of necessity in s.37(1), the Court of Appeal rejected the local authority's argument, observing that the Code is not conclusive and that:

"Necessary is a word in common use and its plain meaning has caused no difficulty in the tribunal. The function of the FtT in these cases is to find facts and to exercise an evaluative judgment by using its specialist expertise about whether an EHC plan is necessary. That is a deduction from the facts and it will depend on the nature and extent of the provision required for the child concerned. It is fact specific conclusion."

In short, therefore, whether an EHCP is "necessary" involves the exercise of highly fact specific evaluative judgment. The fact that a child is making good progress and is having their needs met will not necessarily preclude the test in s.37(1) from being met.

SCHOOL TRANSPORT, EDUCATION AND ARTICLE 14

Jenni Richards QC

In a judgment handed down on 7 April 2020 - *R (Drexler) v Leicestershire County Council* [2020] EWCA Civ 502 - the Court of Appeal considered the applicability of the *"manifestly without reasonable foundation"* ("MWRF") approach to decisions in the sphere of education. Perhaps surprisingly, given the most recent ruling of the European Court of Human Right on this issue[2] and the observations of the Supreme Court in *Gilham v Ministry of Justice*[3], the Court of Appeal has concluded both that MWRF is the test which should be applied where the context is one in which a public authority is required to allocate finite resources and choose priorities, and that there is, in such a context, no material difference between the MWRF test and the conventional proportionality test.

The case concerned a challenge to a local authority's decision to amend its Special Educational Needs Home to School/College Transport Policy. The policy governs the way in which the local authority provides home-to-school transport to children and young people with special educational needs ("SEN"). The authority had been providing actual home-to-school transport to children and young people aged between 16-19 years old who had SEN. Under the revised version of the policy, however, the actual transport previously provided will, save in exceptional cases, be replaced by money payments known as Personal Transport Budgets ("PTBs"). The evidence suggested that the amounts of the PTBs awarded would be insufficient to cover the actual cost of the transport currently provided and that parents would be expected to find alternative means of taking their children to school. Children with SEN aged 5-16 would continue to receive actual home-to-school transport.

The appellant was a 17-year-old child who is severely disabled, with extensive SEN. She attends a special school which is a 26-mile round trip from her home, and currently travels to school on a wheelchair-accessible minibus provided by the local authority. The journey is one of the highlights of her day, and provides her with considerable opportunities for social interaction with the other children who travel on the same minibus. It also gives her father, who is the appellant's primary carer, time to complete household tasks and care for her two siblings. When Council-provided transport is withdrawn, the appellant's father will be required to spend up to three hours each day taking her to and from school.

The appellant challenged the revised policy on the basis that it unlawfully discriminates, on grounds of age, between children and young people with SEN aged 16-18 (such as the appellant) and those aged 5-16, and creates an obvious disadvantage for children in the appellant's age cohort. The challenge was unsuccessful before Swift J and the appellant appealed to the Court of Appeal on the grounds (amongst others) that the judge had erred in applying the MWRF standard when assessing whether the age discrimination arising from the policy is justified, and erred in finding that such age discrimination was justified, to any standard.

The Court of Appeal concluded that there was no binding decision of the Supreme Court which required it to hold that the MWRF test is inapplicable outside of the context of welfare benefits. It noted that there were decisions of the Court of Appeal that had applied that test outside the context of welfare benefits[4] and rejected the submission that the particular importance of the right of access to education under Article 2 of Protocol 1 (as recognised by the Supreme Court

2 *JD and A v United Kingdom* [2019] ECHR 753 (judgment, 24 October 2019).

3 [2019] UKSC 44.

4 The Court referred here to two cases concerning social/public housing (one of which was obiter) and one case concerning the armed forces pension scheme (where it had been assumed, without contrary argument, that MWRF applied).

in *R (Tigere) v Secretary of State for Business, Communication and Skills*[5] and by the European Court of Human Rights in *Ponomaryov v Bulgaria*[6]) itself justified the application of a more intensive standard of review than MWRF.

The Court did not address the recent decision of the European Court of Human Rights in *JD*, which stated that:

> "**88.** However, as the Court has stressed in the context of Article 14 in conjunction with Article 1 Protocol 1, although the margin of appreciation in the context of general measures of economic or social policy is, in principle, wide, such measures must nevertheless be implemented in a manner that does not violate the prohibition of discrimination as set out in the Convention and complies with the requirement of proportionality …. Thus, even a wide margin in the sphere of economic or social policy does not justify the adoption of laws or practices that would violate the prohibition of discrimination. Hence, in that context the Court has limited its acceptance to respect the legislature's policy choice as not "manifestly without reasonable foundation" to circumstances where an alleged difference in treatment resulted from a transitional measure forming part of a scheme carried out in order to correct an inequality…
>
> **89.** Outside the context of transitional measures designed to correct historic inequalities, the Court has held that given the need to prevent discrimination against people with disabilities and foster their full participation and integration in society, the margin of appreciation the States enjoy in establishing different legal treatment for people with disabilities is considerably reduced (see *Glor v Switzerland,* no. 13444/04, § 84, ECHR 2009), and that because of the particular vulnerability of persons with disabilities such treatment would require very weighty reasons to be justified (see Guberina, cited above, § 73). The Court has also considered that as the advancement of gender equality is today a major goal in the member States of the Council of Europe, very weighty reasons would have to be put forward before such a difference of treatment could be regarded as compatible with the Convention (*Konstantin Markin v Russia* [GC], no. 30078/06, § 127, ECHR 2012)."

The Court of Appeal went on to say that, even on a conventional proportionality assessment, the policy fell within the margin of judgment afforded to the local authority and was lawful. Its reasoning was threefold: age is not a "suspect" ground; this is an area in which the local authority had to make difficult choices, in straitened financial circumstances, as to its priorities for public expenditure; and the local authority was entitled to take into account that there as a difference in the statutory regime applicable to children of compulsory school age (i.e. under 16) and those above 16 (notwithstanding the fact that the latter were also under a statutory compulsion to take part in education or its equivalent). The Court also relied on the fact that the revised policy admitted of the possibility of exceptions to be made in the case of real need (even though Swift J had found that the exceptionality provision in the policy was seriously flawed). The Court did not appear, in its judgment, to attach any or any significant weight, in its assessment of proportionality, to the particular importance of the right to education or the likely detriment that would be suffered by the appellant and others in her cohort.

The current position, therefore, unless this case proceeds to the Supreme Court, is that decisions by public bodies as to the allocation of resources in the education context fall within the class of cases in which the courts will afford a very significant margin of judgment to the decision maker.

Jenni Richards QC acted for the appellant.

5 [2015] UKSC 57.

6 (2014) 59 EHRR 20.

CONTRIBUTORS

Jenni Richards QC

jenni.richards@39essex.com

Jenni has an extensive public law practice acting for public bodies, institutions and individuals in all areas affected by public law. She has advised central and local government, educational institutions and parents on a range of educational matters. Her expertise in education law includes local authorities' duties under the Education Act, OFSTED inspections, schools admissions, parental duties, special educational needs, the overlap between social care, health care and educational provision, and deprivation of liberty in educational settings. To view full CV click here.

Fenella Morris QC

fenella.morris@39essex.com

Fenella is ranked by the directories as a leading silk in education law. She is a versatile advocate with a wide-ranging practice including public law and human rights, discipline and regulation and procurement and State aid. She regularly represents and advises higher and further education bodies, local authorities, schools, students and their families and examination and funding bodies and The Office for Students. Her recent work involves challenges to decisions to award degrees, challenges to refusals in admissions processes and claims of negligence and breach of contract in universities. She often advises on overlapping issues of professional education and regulation, such as the approval of higher education institutions as providers of professional education, or disciplinary matters arising during professional studies. She has particular expertise in cases concerning the interrelationship between health, social services and education, and the safe-guarding and treatment of sick and disabled children and deprivation of liberty in educational settings. She writes regularly on education law topics, and has a particular interest in the Prevent duty and the freedom of speech in educational contexts. To view full CV click here.

Thomas Amraoui

tom.amraoui@39essex.com

Tom is ranked as a leading junior in Education law by Chambers and Partners and The Legal 500. He regularly represents local authorities in special educational needs cases, has advised and represented schools in discrimination cases and has experience in the Upper Tribunal on education matters. Tom speaks regularly at education law conferences and seminars, and has delivered training to many authorities on effective case preparation in SEN appeals. Tom also has extensive experience of school admissions and exclusion appeals, having acted as both a representative and clerk at many such appeals. To view full CV click here.

Jennifer Thelen

jennifer.thelen@39essex.com

Jennifer is recognised in the Education law section of Chambers and Partners (Band 4) and The Legal 500 (Tier 5). She regularly appears in the First tier Tribunal and Upper Tribunal on behalf of local authorities in education cases as well as, for both local and central government, on education matters in the High Court. She has been instructed to advise and appear across a range of education matters including special educational needs, disability discrimination, governance, admissions and exclusions appeals, as well as challenges by way of judicial review to the implementation of statements of special educational needs and Ofsted reports. Jennifer has a broad legal background, having practised corporate and regulatory law before being called to the Bar. Jennifer is a member of the Attorney General's B Panel of Junior Counsel to the Crown. To view full CV click here.

CONTRIBUTORS

Steve Broach

steve.broach@39essex.com

Steve Broach is a public lawyer who advises and represents individuals, charities, companies and public authorities. Steve's education law practice is focussed on the educational rights and interests of disabled children and young people and those with special educational needs (SEN). He is regularly instructed in complex judicial reviews and Tribunal appeals involving disputes between families, young people and public bodies. As a co-author of the leading practitioner text in this area (Disabled Children: A Legal Handbook), Steve has comprehensive knowledge of the statutory scheme introduced by the Children and Families Act 2014. Steve is ranked by Chambers & Partners as a leading junior (Band 1) for Education. To view full CV click here.

Katherine Barnes

katherine.barnes@39essex.com

Katherine is a public law and human rights specialist, with particular expertise in education law. She has worked on several claims for the judicial review in this area including a recent challenge to the closure of a rural primary school and a decision by a local authority to reduce its special educational needs funding. In addition to her judicial review work, Katherine regularly appears before the First-Tier Tribunal and Upper Tribunal in special educational needs cases and disability discrimination claims. She also has significant experience of admissions and exclusions appeals. In respect of higher education matters, Katherine's recent work includes advice on student finances and various complaints to the Office of the Independent Adjudicator. Katherine recently acted for Ofsted in relation to the case study on child sexual abuse at residential Catholic schools as part of the Independent Inquiry into Child Sexual Abuse. To view full CV click here.

Rachel Sullivan

rachel.sullivan@39essex.com

Rachel's education law practice includes special educational needs, Equality Act and judicial review claims. She also has experience in the higher education sector, having undertaken a secondment to the Office for Students advising on procedure for the exercise of the OfS's powers and on registration decisions. To view full CV click here.