
Connected compliance

Responding to a SAR can often flush out other GDPR compliance responsibilities that an employer needs to focus on due to the information requirements under Article 15. For instance, does it have established and documented data retention periods for employee data? If not, it will be more difficult to comply with Article 15(1)(d). Will the requestor's data be transferred overseas and, if so, how will the data remain protected in accordance with the standards required by the GDPR? If the employer has no records on data flows of employee data, it will struggle to comply with Article 15(2). The reforms being proposed under UK data protection law will still require an employer controller to be apprised of these elements.

Of course, once an employee has received a copy of their personal data, they may then seek to exercise their other rights eg right to rectification, right of erasure. While these rights are not absolute either, an employer should always be able to identify these requests and be able to respond. Depending on how many SARs and related requests an employer receives, putting an Individual Rights Request Policy in place which the team involved in handling SARs is trained on and adheres to, is an important good governance step which helps an employer comply with their GDPR obligations.

Victoria Hordern, Partner, Taylor Wessing

How can parents minimise the impact of separation on children with SEND? (Part 2)

What considerations should parents of children with SEND take into account when resolving financial matters in court?

In the second of two articles relating to families with child(ren) with SEND, 3PB's specialist family and education law barrister Aimee Fox and Anthony Collins Solicitors' associate solicitor Kadie Bennett look at some important considerations when dealing with financial remedy matters upon divorce.

The former matrimonial home

Depending on the child's needs it may be that the former matrimonial home has been specially adapted to accommodate their needs. This will need to be factored in when considering whether or not the former matrimonial home should be retained by either party.

Parties should note that there are Disabled Facilities Grants which parties may access. How much parties are entitled to depends on the household income and household savings over £3,000. Although, some local authorities do have grants available specifically for child(ren) with SEND that allow them to access the grant without their parents' income being taken into account. In England, the grant is up to £30,000 and in Wales, it is up to £36,000. These grants can be used to widen doors, install ramps, improve access to rooms and facilities, and provide or adapt hearing and light controls. However, you need to own the property or be a tenant and intend to live in the property during the grant period which is five years.

This may be helpful when looking at a parties' housing needs and whether, if eligible for the Disabled Facilities Grant, they would be able to re-house and adapt a new property thereby releasing the equity contained in the former matrimonial home to be divided between the parties. Conversely, it may be helpful to establish that the former matrimonial home should be retained because the costs of purchasing a new home, whether adapted or requiring adaptation would be prohibitive.

In the case where the matrimonial home is retained for the benefit of the child, parties may think about agreeing to a deferred charge against the home, otherwise known as a Mesher Order. This allows the property to be sold, the equity released and divided upon a triggering event at a later date. The usual trigger events include the resident party re-marrying or cohabitating, the children reaching a defined age or finishing education, the death of the resident party or further order of the court. However, where a child with SEND is involved, parties may wish to think about excluding some 'usual' trigger events depending on the child's future potential for independence. They may want to think about including other bespoke trigger events such as: the child's attendance at a residential school for 38/52 weeks per year; when they transfer to adult services or, unfortunately, if the child has a limited life expectancy, the death of the child.

One of the primary considerations of the courts is the housing needs of the parties, to include any dependent children. Where a child has SEND, the court will strive to ensure that their needs are met and that they are appropriately housed. In a case where the former matrimonial home is sold, the 'primary carer' for the child might receive a bigger percentage of the equity from the former matrimonial home and any other liquid assets i.e. bank accounts, ISA's etc to assist with rehousing as the child will be the court's first consideration when it is assessing the relevant factors and making a decision. This could leave the other parent in a position wherein they retain more of the illiquid assets i.e. pensions or investments as a way in which to offset against the liquid assets being kept by the other. This can leave parents in the invidious position wherein

they may need to live in rented accommodation and try to rebuild their cash reserves in order to purchase a property in the future whilst the other parent is able to rehouse themselves more quickly and easily.

Income and earning capacity

The type and level of a child's needs may impinge on a parent's ability to work. If a child requires 24-hour care, then understandably a parent will be unable to work and therefore may be dependent on spousal maintenance and/or state benefits. However, if a child has low-level care needs and can attend a state school, the parent may be able to maximise their earning capacity by looking for work with hours that can be arranged around the child's school hours.

An Education Health and Care Plan (EHCP) may be a helpful evidential tool in establishing how much hands-on care a child requires and the impact this may or may not have upon a party's ability to work. As aforesaid, it may be that a child requires round the clock care/1-1 or 2-1 care and therefore finding paid-for work that fits around those commitments may be difficult. Conversely, the EHCP may indicate that the child requires no additional care and can attend mainstream school full-time, this might be an indication that there is little impact on that party's ability to work over and above the impact that having a child of school-age may naturally have.

An EHCP can be useful for advancing a case where there is a claim for spousal maintenance, particularly if one parent is attempting to minimise the extent of the child's needs to support an argument that the other parent could increase their earning capacity. Conversely, it could also be a useful tool in defending against a case of spousal maintenance, where there is a suggestion that one party is in fact exaggerating a child's needs so as to inflate their spousal maintenance needs.

Child maintenance

Irrespective of whether the paying parent is over the Child Maintenance Service (CMS) threshold, the reality is that a child with SEND may have educational needs over and above those that can be met by child maintenance alone. The key will be to maximise all sources of income including state benefits. Parents may qualify for an extra element of Child Tax Credit as well as Disability Living Allowance for the child and/or Carers Allowance. Families can access additional help from their local authority who, as part of any needs assessment, will look at what financial help can be offered. As referred to above, this can range from grants to adapt property to financial help towards travel costs for hospital visits and respite services. Parties should also be aware that whilst child maintenance via the CMS ordinarily draws to a close when a child turns 16 or at the age of 20 if they are in school or other approved education or training full-time until then. It is worth checking the specific requirements with the CMS as for example, university does not count.

A parent of a child with SEND may consider that financial support is required for the child beyond the age of 18. In certain circumstances, it is possible for the young person to make an application to the court for periodical payments or a sum of money themselves or a parent may do this on their behalf if the child does not have sufficient capacity to apply to court.

There are of course other factors that the court needs to take into consideration when determining how the parties' matrimonial finances should be divided upon separation. They are enshrined within Section 25 of the Matrimonial Causes Act 1973. When making decisions in respect of a family who has a child with SEND those factors may also be viewed through the lens of how the overall financial outcome will affect the child and their care moving forward.

*If you require further advice about the arrangements for your child with SEND, please do not hesitate to contact either **Miss Kadie Bennett** – associate solicitor at **Anthony Collins Solicitors** at kadie.bennett@anthonicollins.com or call 0121 214 7417 or to instruct Aimee Fox on a family or education law matter, please contact her clerk Ian Charlton on ian.charlton@3pb.co.uk or call him on 0121 289 433.*

In Brief

Consultation on draft updated OIA guidance on Handling complaints and academic appeals

The Office of the Independent Adjudicator (OIA) last month published for consultation an updated version of the *Good Practice Framework: Handling complaints and academic appeals*. The OIA said:

“This first and main section of the Good Practice Framework sets out guidance on handling complaints and academic appeals in higher education in England and Wales. It is intended to support providers to develop