Social Care in England

A Guide for Parents

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Introduction

Welcome to our guide on Social Care in England. Please note that it has been written specifically for parents of disabled children living in England: if you live in Wales, please refer to its sister guide, 'Social Care in Wales: A Guide for Parents', which is available free-of-charge on our website. Our guides are not intended to be legal advice and should not be relied on as such. Where particular issues arise, parents should always take specific, independent legal advice.

The law considers disabled children to be children 'in need'. This is important because local authorities have a duty to assess the needs of children in need, which means that your Local Authority must carry out an assessment of your child's needs if you ask them for one. Such an assessment has the potential to unlock support for your child. If your Local Authority refuses to carry out an assessment it would be acting unlawfully and you would have the right to challenge it (please see 'Complaints' on page 33).

After carrying out an assessment of your child's needs your local authority may decide that it is 'necessary' for it to provide social care services in order to meet one or more of the needs that have been identified. If this is the case it must arrange for all of these services to be put into place. If it refused, or only made arrangements for some of them, then it would be acting unlawfully and you'd have the right to make a complaint as above.

With this in mind our guide covers the following areas:

1. **The basics.** An overview of local authorities' key responsibilities regarding the provision of social care for disabled children, including some of the 'general principles' they should be following when making decisions about supporting your child.
2. **When might my child be entitled to additional services?** This section explains when the law would expect your child to be entitled to support from your local authority.
3. **The assessment process.** In this section we discuss the circumstances when your local authority has a duty to assess the social care needs of your child. Importantly, it also deals with your local authority's responsibilities to assess and, if necessary, meet your own needs. Then, we look at how assessments should be carried out and the timescales that need to be met before going on to consider the controversial area of the 'eligibility criteria' used by local authorities to decide whether or not they have to provide social care services to disabled children.
4. **What support can my local authority provide?** Here we give a detailed guide to the social care services that your local authority can provide, when they should be provided and whether you, or your child, can be charged for them. We also provide a detailed explanation of 'short breaks', a particularly important service that your local authority can provide to give you temporary respite from caring for her.
5. **Direct payments and personal budgets.** So, your local authority has decided that you and/or your child are eligible to receive social care services: what happens next? How do these services get put into place? In this section we explore how you can ask your local authority to pay you directly so that you are in control of finding and paying for the agreed support – this is known as 'direct payments'. Alternatively, you can ask your local authority to arrange a 'personal budget', which usually means that your local authority will keep control of the money-side of things but support services will be managed in accordance with your wishes.
6. **Care plans.** In this section we set out the way in which your child's care needs should be recorded by the local authority. This is an area which changed significantly when Education,

Health and Care (EHC) plans were introduced in 2014. EHC plans replaced Statements of Special Educational Needs and require local authorities to have a 'joined up' approach to meeting a child's different needs – including care needs.

7. **The Equality Act 2010 and social care services.** Here we explain how the Equality Act 2010, which protects disabled people from discrimination, is relevant to families when receiving (or seeking) social care services.
8. **Complaints.** What happens when you're unhappy with something your local authority has decided about your family's social care needs? This section looks at the options you have to make a complaint.
9. **Glossary.** This section contains definitions of certain key legal terms used when talking about social care. Each term appears highlighted in blue.
10. **Resources.** This lists some helpful resources if you are interested in finding out more about social care law.

1. The Basics

1.1 When is my child entitled to additional social care support?

If your child has a disability, then local authorities have a duty to assess his needs, including social care needs. Disability is defined in the Children Act 1989, and includes being blind, deaf or dumb, having any kind of mental disorder, or being "substantially and permanently handicapped by illness, injury or congenital deformity". It is clearly a very broad definition and includes a wide range of conditions including autism.

1.2 What is the legal basis for the "duty to assess"?

Your local authority has a duty to assess your child's social care needs because disabled children automatically meet the definition of a "child in need" under the Children Act 1989 (all children "in need" – disabled or otherwise – must have their needs assessed by the local authority which is responsible for them). In the case of your child, this assessment will involve identifying the services and support to meet his needs. Please find more information below on both the duty to assess and the kind of services that an assessment can lead to.

1.3 General principles

The law governing the responsibilities of local authorities in the field of social care is complex, and can be confusing. Where specific issues arise, you may need to obtain specialist advice. Details of organisations that work in this area and which can provide more detailed information and advice are set out in the Resources section on page 38. However, you might find it helpful to keep in mind the following general points:

- You have a right to ask for assessments of your child's needs to be carried out, to be involved in the assessment process and to be informed (in writing) of the local authority's decision on what (if any) services and support should be provided.
- Importantly, as a parent of a disabled children you also have an independent right to an assessment of your own needs for support (known as a parent carer's needs assessment). Your local authority has a duty to assess whether it is appropriate for you to provide (or continue to provide) care for your disabled child, depending on your needs and wishes.
- The views of both you and your child are key to any decisions regarding the care and

support which should be provided by your local authority. This is emphasised in the Children and Families Act 2014 (section 19), which deals specifically with children with special educational needs, but also applies generally to social care provision for disabled children. Difficult issues can occur if your child has the capacity to make decisions in his own right. Generally speaking, the law assumes that children under 16 are not able to make decisions for themselves, in which case decisions will be taken on their behalf by individuals with 'parental responsibility'. However, this isn't necessarily straightforward since the law also allows children who can understand the implications of a particular decision (e.g. to receive medical treatment) to make decisions for themselves. There may also be situations in which your child wants to access support from your local authority on a confidential basis or is unwilling for you to disclose information to the local authority without his consent. The legal and practical issues which arise in relation to capacity and confidentiality are far from simple. However, you can find a more detailed discussion on the ins and outs of this area in our parent guide 'Decision-making, Confidentiality and Sharing information: A guide for Parents'.

- It's useful to remember that the law considers your local authority to be a public body and, like all public bodies, it must at all times respect a number of general duties, including:
  - A duty to act reasonably and fairly, which involves (among other things) giving logical and appropriately detailed reasons for their decisions, acting without unnecessary delay, acting in accordance with any published policies and honouring any promises or commitments they may have made unless there is good reason to depart from doing so.
  - A duty to comply with the law, including both specific legislation in the field of social care, and more general pieces of legislation such as the Human Rights Act 1998.
  - It is also important to understand that your local authority has to comply with the Equality Act 2010 (please see Section 7 on page 29). This is very relevant to your disabled child since disability is considered to be a 'protected characteristic' under the Equality Act, meaning that your local authority isn't allowed to discriminate between disabled and non-disabled children, for example in the provision of services. In particular, your local authority is required to make 'reasonable adjustments' in situations where your child would otherwise be placed at a substantial disadvantage in accessing public facilities or services.
- Other general principles governing the approach that your local authority should follow can be found in the 'National Service Framework (NSF) for Children, Young People and Maternity Services (2004)'. This sets out 11 'standards' for "promoting the health and well-being of children and young people; and for providing high quality services that meet their needs". Although these standards are markers of good practice and not formal legal requirements, they provide a useful indication of what is expected from your local authority, and (since they have been issued by central government) it must take them into account when making decisions or developing policies concerning children. The following 'standards' are especially relevant to you as a parent of a disabled child: Standards 6 (concerning children and young people who are ill), 7 (concerning children and young people in hospital), 8 (disabled children and young people and those with complex needs) and 9 (concerning children and young people with mental health needs). You'll find more information in the Resources section on page 38.

1.4 Social care and Education, Health and Care (EHC) plans

In many, though by no means all, cases disabled children also have special educational needs. The Children and Families Act 2014 introduced a new system for the assessment of the education, health and care needs of children with special educational needs[1]. Following a request for an EHC needs assessment, by a parent, for example, or if the child has otherwise been brought to its attention, a local authority must decide whether an EHC needs assessment is necessary. If the local authority does indeed decide that an assessment is necessary, it must carry one out. If as a result of the assessment the local authority thinks it is necessary for special educational provision to be made in accordance with an EHC plan, then it must prepare a plan. Please note that the law requires EHC plans to set out the social care provision which must be made for the disabled child in question, including any social care which is reasonably required as a result of his or her learning difficulties/special educational needs.

You can find more information about EHC assessments and EHC plans in our guide 'Education in England: A Guide for Parents'. We look at the specific interaction between EHC assessments/plans and 'children in need' assessments in section 3.6 on page 12.

1.5 Practical tips

It is important to realise that when it comes to your child you have expert knowledge that the professionals working with your child don't have. You know him very well and you know how his disability and/or health care condition affects him, his siblings, you and other family members. You should be involved in all assessments of his social care needs as well as any related meetings, such as reviews of your child's care plan. You also have a right to a parent carer needs assessment.

In order to prepare for meetings and assessments you might find it helpful to:

- Make a note of the discussions that you have with practitioners about your child's health and wellbeing, for example confirmation of your child's diagnosis.
- Keep all relevant papers together in one place (this might include, for example, letters you receive from health, social care and other practitioners, copies of your letters to such professionals concerning your child and notes of your discussions with them).
- Prior to an important meeting or assessment of you or your child, make a note of the points that you want to discuss, such as:
  - your child's needs and aspirations (what your child is able to do, what he isn't able to do) and what might help him achieve his aspirations;
  - your role as a carer and its impact on you and your family (how much care you provide and how often; whether this is impacting on your health, ability to work, see friends, spend time with other members of your family; whether you have any financial concerns);
  - how other members of the family are affected by your child's disability;
  - the harm being done to your child, you and other family members because of his unmet needs; and
  - what you want to happen as a result of the meeting, including the timescale and who is to do what, and clarifying whether previous agreements have been carried out, and if not, why not, and when these will be completed.

During the meeting, try to keep a note of any key statements and promises that are made – especially who has agreed to do what and when – and any outstanding questions. Then email or post a letter to the person in charge of the assessment confirming these points and raising any questions that are of concern to you.

1 Special Educational Needs is defined as a learning difficulty or disability which calls for special educational provision to be made the pupil concerned.

It's also a good idea to familiarise yourself with the key content of certain important documents produced by your local authority which are relevant to the provision of social care for disabled children. In particular, it may be useful to refer to:

- The 'threshold documents' which are published by all local authorities setting out (amongst other matters) the criteria, including the level of need, for when a case should be referred to a local authority children's social care services for assessment and for statutory services (for children in need).
- The 'local protocols for assessment' which, again, local authorities must publish setting out clear arrangements for how cases will be managed once a child is referred to them, as well as the way in which different kinds of assessment (e.g. children in need assessments and EHC needs assessments) will interact with one another.
- The 'local offer' which, following the introduction of the Children and Families Act 2014, all local authorities must publish, sets out the provision (including social care provision) which they expect to be available in their area for children who have special educational needs or a disability. This must include information regarding any eligibility criteria which the local authority in question applies to the provision of social care services for disabled children.

Even a slight knowledge of these documents will be very helpful to you in your discussions with local authority officers. In particular, local authorities must generally act in accordance with their own published policy unless they have very good reasons for not doing so. So, if you are aware of what the policy documents say you'll be in a better position to ensure that the local authority provides the full support that your disabled child is entitled to.

1.6 How can I get hold of these key documents?

All of these documents should be easy to find online. If you have trouble finding any of them contact your local authority and ask for them to be forwarded to you. When you write to your local authority (e.g. in the context of a request for a needs assessment, or in the course of a complaint about service provision), don't hesitate to ask for copies of these documents if they aren't readily available.

2. When is my child entitled to additional services?

If your child is a disabled child, your local authority may be required to provide additional social care services and support. This is because local authorities have specific duties towards all children in their area who meet the legal definition of a "child in need", and all children who are disabled qualify as children in need.

The key pieces of legislation setting out local authorities' duties in this area are the Children Act 1989 and the Chronically Sick and Disabled Persons Act 1970 (CSDPA 1970)[2].

2.1 What is the legal definition of a 'child in need'?

A child is in need[3] if:

- she's unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development unless she's provided with services; or
- her health or development is likely to be significantly impaired or further impaired unless she's provided with such services; or
- she's disabled (please see below for the relevant definition of 'disabled').

2.2 What's the legal definition of a disabled child for social care purposes?

The law dealing with children in need considers a child to be disabled if she is "blind, deaf or dumb or suffers from mental disorder of any kind or is substantially and permanently handicapped by illness, injury or congenital deformity or such other disability as may be prescribed".

This is a very wide definition – particularly because it includes a 'mental disorder of any kind' (which of course would include not just a child with learning disabilities or a mental health problem but also one with, for example, 'high functioning' autism, Asperger Syndrome or Attention Deficit Hyperactive Disorder).

2.3 Does my child have to meet the legal definition of 'disabled' in order to be treated as a 'child in need'?

Despite the very wide definition of 'disabled', you might be told that your local authority doesn't think it applies to your child. You might be told that your child's disabilities aren't considered bad enough, or there isn't a medical diagnosis of mental disorder. If this happens, you should ask for a written explanation of how the local authority came to this conclusion. It's also important to realise that your child could still be a 'child in need' even if she doesn't meet the legal definition of 'disabled'. This is because the definition of a 'child in need' also includes those children who are unlikely to reach or maintain a reasonable standard of health and development, or whose health and development will be significantly impaired, unless services are provided by your local authority. This might apply to your child even if she isn't 'disabled' in the eyes of the law.

Your local authority must consider:

- whether your child is 'disabled, as defined above; and
- the effect of any failure to provide additional services on his/her 'health and development'.

2 Please note that there are a number of references to this act in the rest of the document and we will be using the abbreviation CPDPA.

3 As defined in Section 17(10) of the Children Act 1989

Therefore, if your local authority tells you that it doesn't consider your child to be a disabled child/child in need you should ask it to reconsider its decision in light of the two key factors above. You should also ask for copies of the local authority's 'threshold document' and its 'local protocol' (see section 1.5 on page 7), if they aren't already easily available online. These documents will be useful in helping you to decide whether the local authority is following its own published policy, and you may need to refer to them if you decide to make a complaint or (if it comes to it) take legal action.

2.4 How will my local authority decide whether my child needs additional support?

In order to decide whether additional services and support are required to meet your child's (and your family's) needs, your local authority will need to carry out an assessment of those needs. You'll find an explanation of when such an assessment will be carried out and the process local authorities are required to follow in Section 3 below.

It's important to realise that it's not only your child who can be provided with services and support. Any members of your family can also receive services and support if that will help your child. For example, it's recognised that providing services which meet the needs of parents (e.g. by 'short breaks' or respite care) is often an effective way of promoting the wellbeing of children, particularly disabled children. Please see parent carer needs assessments - Section 3.17 on page 19.

3. The Assessment Process

In this section we take a look at some of the key questions you're likely to have about the how your child's social care needs will be assessed. We concentrate mainly on children in need assessments (which, in the case of your disabled child, means assessing what support he is due under the Chronically Sick and Disabled Persons Act (CSDPA) 1970). However, please note that if your child has a level of SEN which requires an Education and Health Care Needs assessment then there may be some crossover between the two assessment processes. This is also considered below and you can find more detailed information in our 'Education in England: A Guide for Parents' publication).

3.1 What is a 'child in need assessment'?

A child in need assessment is an assessment of a child who is legally recognised as being 'in need' (for more information please see section 2.1 on page 9). It's carried out by the local authority where he lives in order to identify all of the services (including social care services), and any other interventions, that are required to safeguard and promote his welfare.

3.2 Is there any government guidance on children in need assessments?

Yes, the government has published statutory guidance called 'Working Together to Safeguard Children: A guide to interagency working to safeguard and promote the welfare of children'[4]. This is usually shortened to 'Working Together' and that's the title we'll be using in the rest of this guide. It explains the principles governing children in need assessments, including assessments of the needs of disabled children. It's a very useful resource for any parent who wants to know more about children in need assessments and how they should be carried out. Importantly, the law requires local authorities to follow what the government has set out in 'Working Together' (for example, how quickly they should carry out assessments), unless they've got very good reasons for not doing so. Please note, however, that it's more focused on child protection issues and less on meeting the needs of disabled children.

3.3 How can I request an assessment of my child's needs?

You should write to your local authority's children's services department asking for an assessment of your child and your family's needs. If you prefer, you could ask a professional involved in the care of your child, such as his GP, to make the request on your behalf. Either way, you need to explain the problems you're having and what you'd like help with. If you know, tell them the kind of help you are looking for as well, for instance, someone to take your child out so that he can take part in an activity in the community for 4 hours a week.

The letter should explain that your child has a disability, giving details of what that disability is (including any diagnosis that your child has been given). If you have written confirmation of your child's diagnosis, include a copy of this with your letter. Your GP should be able to provide confirmation of your child's condition.

You should explain that you've been advised that since your child has a disability he's a child in need under section 17 of the Children Act 1989 and that this means that your child has a right to an assessment of his needs.

Your local authority is required to inform you whether it will carry out an assessment within one working day of receiving the request for the assessment. So, include in your letter the date on which you want a response to your request, not forgetting to give your full contact details (address, phone number, email address, etc.). Put this date

4 We're referring to the version dated July 2018 and last updated 21 February 2019.

in your diary and be prepared to telephone the local authority if you don't get a reply. The local authority should inform you of its decision, i.e. whether it's going to carry out an assessment or not, and how it came to this decision.

You should be able to find the contact details for your children's services department on your local authority's website.

3.4 Does my local authority have to carry out an assessment if requested to do so?

The short answer to this is, yes! Even though the law doesn't spell out in black and white that local authorities must assess the needs of children in need (including disabled children) the courts have made it very clear that local authorities do, in fact, have to carry out this type of assessment when asked. Usefully, 'Working Together' makes it clear[5] that a local authority must also assess whether it is necessary to provide the specific forms of social care support that can be provided under the CSDPA 1970 in order to meet the needs of the disabled child in question.

So, if your child is a child in need either because he's disabled or for another reason (please see sections 2.1 and 2.3 on page 9) your local authority must carry out an assessment to identify not only his needs but also those of the wider family. That's why it's so important to establish from the very start why your child is a child in need - because that will trigger the assessment.

3.5 What about assessments of special educational needs (SEN)?

Following the introduction of the Children and Families Act 2014 local authorities may have to carry out an 'Education, Health and Care (EHC) needs assessment'. This is an assessment of a child's educational, health and social care needs which local authorities must carry out if they think is necessary to arrange special educational provision in accordance with an 'EHC plan'. A child has 'special educational needs' (SEN) when he has a learning difficulty or disability which calls for special educational provision to be made for him.

Although not all disabled children have SEN many do and this means that it's potentially a very important assessment for many parents of disabled children. Usefully, the threshold for carrying out an EHC assessment is relatively low and is triggered wherever the local authority believes that a child may have SEN and that it may be necessary to make special educational provision to meet those needs.

This may all seem to be a bit complicated but you can read about it in more detail in our 'Education in England: A Guide for Parents' publication.

3.6 What's the connection between children in need assessments and EHC needs assessments?

It's perfectly possible that your child meets the legal definition of a 'child in need', as explained above, and also have a learning difficulty or disability as described in the Children and Families Act 2014. If this is case then, technically, your local authority has a duty to carry out both a child in need assessment and an EHC needs assessment. In practice, however, local authorities are expected to carry out assessments in a way which minimises the impact on the life of the child and his family. This means that when the law asks your local authority to carry out two assessments it should do them at the same time as far as is practically possible.

The government has published a 'Special Educational Needs and Disability (SEND) Code

5 Paragraph 28 on Page 21.

of Practice'[6] to accompany the Children and Families Act 2014. This makes it clear that EHC needs assessments should be combined with children in need assessments where appropriate (paragraph 10.18). EHC plans which result from EHC needs assessments contain specific sections (H1 and H2) which must set out the social care provision to be made for a child. This emphasises the need for a joined-up approach to child in need assessments and EHC needs assessments. Please note that your local authority can't refuse to carry out an EHC needs assessment because it has already carried out a child in need assessment (or vice-versa).

You should contact your local authority if you need any further information about how it carries out a child in need assessment combined with an EHC needs assessment.

3.7 Can my local authority refuse to carry out a child in need assessment if my child does not have a medical diagnosis?

Sometimes local authorities refuse to carry out an assessment of need if a child doesn't have a medical diagnosis. Indeed, having a firm diagnosis from a medical professional can be very helpful in encouraging your local authority to carry out an assessment of your child's needs and getting the right support for your child at the right time.

However, it is important to realise that the law doesn't ask for there to be a medical diagnosis in order for a child in need assessment to be carried out. It only requires your Local Authority to be satisfied that your child is a 'child in need' and as we have seen in sections 2.1 and 2.3 on page 9 this isn't only limited to disabled children with a known medical condition. As long as the local authority believes that your child's health or development will be harmed if it doesn't provide additional services then he will fall into the 'child in need' category and will therefore be eligible for an assessment.

When it receives a request for an assessment your local authority should, at the very least, satisfy itself as to whether or not your child is disabled or meets one of the other definitions of a child in need. If necessary, it should ask for help from medical professionals in coming to a decision.

(Similarly, a definitive medical diagnosis is not a pre-requisite for entitlement to an adult social care assessment under section 9 of the Care Act 2014, and there is no reason why the same approach should not apply to social care assessments for disabled children).

If your local authority unreasonably insists on a formal medical diagnosis you may well have cause for a complaint or even legal action (please see section 8 on page 33). Likewise, if the local authority refuses to carry out an assessment altogether when asked to do so, or fails to let you know when it intends to carry out an assessment or what form that assessment will take, you may wish to make a complaint – again, please see section 8 on page 33).

3.8 Is a medical diagnosis required before an EHC needs assessment will be carried out?

No. An EHC needs assessment must be carried out if your local authority thinks that he may have special educational needs which warrant special educational provision – there is no requirement for any kind of medical diagnosis.

3.9 What is the purpose of an assessment?

The purpose of an assessment is to find out:

- your child and family's needs;
- what, if any, social care services and support should be provided to meet those needs; and
- who is best placed to provide them.

6 Please note that at the time of writing the original 2014 version, last updated 11 May 2015, was in force and this may have been superseded after the publication of this guide.

Although the local authority will usually be responsible for co-ordinating the assessment it's likely that other agencies, such as health and education, will also be involved (particularly in the case of EHC needs assessments).

3.10 How is the assessment carried out?

An assessment consists of three phases:

- Gathering of relevant information which will, of course, include talking to you, your child and all the other key people in his life;
- Evaluating the information and documents gathered in the first phase. This will include deciding which of your child's and your family's needs require additional social care support services to be provided; and
- Setting out the support in a detailed care plan (see section 6 on page 27).

The identified support will then be provided either directly by your local authority or by making a 'direct payment' to you in order to cover the costs of arranging and paying for the support services yourself (see section 5 on page 25).

3.11 What kind of things will the assessment look at?

The assessment may involve a number of separate assessments by different agencies (such as health and education). However, good practice says the process should be as unintrusive to your child and family as possible. The assessment will look at a wide range of issues but 'Working Together' identifies three key 'domains'[7]:

- Your child's developmental needs (which may include health, education, emotional and behavioural development, family and social relationships and self-care skills);
- Your capacity as a parent/carer to respond to those needs (so-called 'parenting capacity, which includes the capacity to provide basic care, ensuring safety and stability) as well as the capacity of other carers (resident or non-resident) and any other adults living in the household to respond to those needs; and
- The impact and influence of wider family, community and environmental circumstances (such as the family's housing, employment and income situation).

The previous version of 'Working Together' clearly states that 'a good assessment is one which investigates (these) three domains'[8].

'Working Together' also makes it clear that good assessments support practitioners to understand whether a child has needs relating to their disability and is suffering or is likely to suffer significant harm[9].

The assessment will also consider issues such as the impact of your child's impairment on things like whether it affects his growth, development and physical or mental wellbeing and what action could be taken to ensure that he has maximum access to family, education and community life.

3.12 Who will be involved in the assessment and how will it be carried out?

Although professionals from other agencies may be involved, a social worker[10] from your local authority will usually take the lead role in co-ordinating the assessment of your child's needs.

7 Paragraph 52 on Page 26.

8 Working Together 2015; Paragraph 36 on Page 21.

9 Paragraph 46 on Pages 24 and 25.

10 'Working Together' says that 'in order to carry out good assessments, social workers should have the relevant knowledge and skills set out in the Knowledge and Skills Statements for child and family social work' Paragraph 49 on Page 25.

It also states that 'social workers should have time to complete assessments and have access to high quality practice support. Paragraph 49 on Page 25.

NB: the use of the term 'social worker' means that the person carrying out the assessment must have a social work qualification and be registered with the relevant regulatory body.

The social worker must meet with you and your child as well as other key people such as family members. This may involve more than one meeting.

The professionals undertaking the assessments should follow the policy and practice guidance for the assessment of children set out in 'Working Together'. You may hear professionals refer to other assessment procedures, such as the Common Assessment Framework (CAF) and, if your child has mental health problems, the Care Programme Approach (CPA). However, both of these should be used together with the process set out in 'Working Together', which makes it clear what individuals, organisations and agencies must and should do so that they can respond appropriately to your child's needs[11].

'Working Together' expects that:

- assessments should be a dynamic process[12] and the specific needs of disabled children should be given sufficient recognition and priority in the assessment process[13];
- social workers revisit their assumptions in the light of new evidence and take action to revise their decisions in the best interest of the individual child[14]; and
- the Children Act 1989 promotes the view that all children and parents should be considered as individuals and the family structures, culture, religion, ethnic origins and other characteristics should be respected. [15]This may require a local authority to offer help in your (or your child's) first language.

A key part of the planning for the assessment will be deciding who will be involved; for example, which professionals and which family members will be included. 'Working Together' is clear that in carrying out an assessment the social worker should "draw together relevant information gathered from the child and their family and from relevant professionals including teachers, early years workers, health professionals, the police and adult social care". [16]These professionals may be invited to provide information and give their views on your child's needs, which could mean that they'll want to talk to you and your child.

The assessment process and the people who will be involved in it will need to be discussed and agreed with you and your child so that you know:

- what assessments are needed and why;
- who will be involved in the assessments;
- when they'll be carried out;
- how the various assessments will be used to come to evaluate your child's needs; and
- what services are required to meet those needs.

You should be informed about where the assessment(s) will take place (usually in your home) and how long it'll take.

'Working Together' states that it's the responsibility of the social worker to make clear to children and families how the assessment will be carried out

and when they can expect decisions on next steps.[17]

In addition to your child's assessment, your needs as a parent carer must also be considered (see below). This is because recognising your needs, and providing the support necessary to meet those needs, is important to your and his welfare.

3.13 Will my views and the views of my child be taken into account?

Your views are very important and you should be encouraged to contribute to the process. If you'd like a friend, advocate or relative to support you during the assessment, this should be arranged.

11 Paragraph 9 on Page 8.
12 Paragraph 44 on Page 24.
13 Paragraph 46 on Pages 24 and 25.
14 Paragraph 61 on Page 29
15 Paragraph 36 on Page 23.
16 Paragraph 55 on Page 28
17 Paragraph 77 on Page 31.

The lead professional should also explain to your child why the assessments are being carried out and encourage him to take an active part. Good practice would expect this to be done in an age-appropriate way. Consideration should also be given as to whether he, or any other family members, have any communication needs and, if so, how they'll be met.

'Working Together' makes it clear that high quality assessments should be 'child-centred'. If there are any conflicts between different views they should always be decided in the best interests of your child[18].

Wherever possible your child should be seen alone with the aim of finding out his own personal wishes and feelings about any services that are to be provided[19].

You should also be aware that[20] the local authority has to take into account both your wishes and your child's wishes when carrying out EHC needs assessments and drawing up an EHC plan.

3.14 How long should an assessment take?

As the previous version of 'Working Together' says [21], 'for children who need additional help, every day matters. So, it's very important that assessments are carried out as quickly and effectively as possible.

Within one working day of receiving your request for an assessment, a local authority social worker should make a decision about how they're going to respond and let you know what they're going to do[22].

Assuming that your local authority agrees to your request for an assessment - how long will it take? Unfortunately, there isn't a black and white answer as we explain below.

18 Paragraph 51 On Page 25.
19 Second bullet point in 'Statutory requirements for children in need' on Page 20.
20 Section 19 of the Children and Families Act 2014
21 'Working Together 2015', Paragraph 10 on Page 7.
22 Paragraph 71 on Page 30.

This means that there is no one-size-fits-all timescale for an assessment; what is reasonable will be determined by the specific needs of your child, which may emerge over time during the "dynamic" assessment process. Nonetheless, Working Together sets out a "maximum timeframe" of **45 days** from the point of referral. It is crucial to remember that this is an "outer limit" and not a target; failure to comply with the 45 day timeframe, without very good reason, will be a basis for a complaint and potentially legal action against the local authority concerned.

Although 'Working Together' does give a timescale for the assessment process it isn't always followed. The key issue to be considered is 'reasonableness'. Is the time the local authority takes to complete the assessment reasonable? If the need is urgent, then the assessment process should be quick. If the need is complex and non-urgent, then it may take longer – especially if there are a number of meetings involving a lot of professionals. However, even if this is the case there's nothing to stop your local authority putting some services into place as a short-term measure while it works on the rest of the care plan. 'Working Together' clearly says that whatever the timescale of the assessment, social workers shouldn't wait until it is finished before commissioning services, and in some cases the needs of the child will mean that a quick assessment is necessary[23].

This means that there isn't a one-size-fits-all timescale for an assessment. A 'reasonable' period to complete the assessment will vary from child to child and their individual needs and circumstances, which may only become obvious over time as the assessment process moves forward.

Nevertheless, 'Working Together' does set out a 'maximum timeframe' of 45 days from the referral being received[24]. It's very important to understand that this is an 'outer limit' and not a target. If your local authority fails to comply with the 45 day timeframe, without very good reason,

23 Paragraph 76 on Page 31.
24 Paragraph 75 on Page 31.

you'll have grounds to complain and possibly even take legal action against it. If you believe that your local authority has caused a delay by acting unreasonably, you should consider making a complaint (see section 8 on page 33).

Once the local authority has completed the assessment it should write to you (and, if appropriate, your child) to let you know what it's decided. It should give you a chance to record your views, including anything you disagree with, and if you notice anything that's wrong or missing you can ask them to correct it.

3.15 What happens once the social worker has collected all the relevant information?

Basically, your local authority has to decide whether it's going to provide support for all, some, or none of the needs that have been identified during the assessment. To do this it must take into account all of the relevant information that it has about your needs, your child's needs and those of your family. You may hear this talked about as deciding whether 'an intervention is required'.

As discussed above, if you don't agree with any of the findings of the assessment, you should be given a chance to record your point of view on the assessment record and ask for corrections to be made.

3.16 Can my local authority use 'eligibility criteria' to decide whether my child has a right to social care services?

This can be a controversial and difficult aspect of the assessment process.

It helps to be aware that there are <u>two</u> different 'stages' of the process where eligibility criteria may play a part:

1. Your local authority may try to use eligibility criteria when it is deciding whether or not to carry out an assessment of need when you've requested one. As discussed above in sections 2.1 and 2.3 on page 9 there is a legal definition of a 'child in need'. This has been decided by Parliament and provided a child meets the definition in one way or another he has a legal right to an assessment. Local authorities can't overrule Parliament and change the definition or add to it in anyway. They must apply it exactly as it is written. So, your local authority can't lawfully say, for example, we only assess the needs of 'severely' disabled children or children with 'an IQ of less than 70' because that would be using more restrictive criteria than Parliament has decided and would be unlawful.

   If your local authority uses additional criteria in this way you should consider making a complaint and, if necessary, get legal advice. Please see our 'Accessing Public Services Toolkit' and 'Finding and Assessing Sources of Legal Help: A Guide for Parents' publications for more information.

2. Once your child's needs have been assessed, the local authority may impose eligibility criteria to decide which social care services he is entitled to get. This may or may not be lawful.

   We have to get a bit technical now but it useful to know that where an assessment has decided that it is necessary to provide services detailed in section 2 of CSDPA 1970, then those services must be provided[25]. The courts have also made it clear that where this is the case it is unlawful for local authorities to refuse to pay for such services on the grounds of cost and use 'the budget's been spent' as an excuse for refusing support. So, if your local authority decides that it's necessary to provide your child with any of the services listed in section 2 of the CSDPA 1970[26] it must provide

25 See 'Working Together', Paragraph 28 on Page 21.
26 For a full description of the relevant services please see paragraphs 3.48 – 3.57 of Disabled Children: A legal Handbook.

them. It can't use eligibility criteria or a lack of financial resources as a reason not to do so. That would be unlawful.

This was confirmed in an important judgment in 2009[27]. However, the same case also made a decision which complicates things. It made it clear that local authorities can use eligibility criteria to decide whether it is 'necessary' to provide the services in the first place. This will involve considering the seriousness of the need against, for example, the resources available to the local authority. But the same principle explained above still applies - once it has been decided that a particular service under section 2 of CSDPA 1970 is necessary, then it must be provided regardless of how much it costs

There's no doubt that the way local authorities use eligibility criteria can be confusing. This isn't helped by the fact that the government hasn't producedany guidance on how eligibility criteria can be used specifically in the case of disabled children. However, as long as local authorities can use eligibility criteria to determine whether it's 'necessary' to provide services to people assessed to be in need, it's useful to know that those criteria must:

- be clear, publicly available and transparent. In particular, they must be published in the 'local offer' introduced by the Children and Families Act 2014[28];
- comply with equalities law, especially the 'public sector equality duty' (please see section 7 on page 29) which requires local authorities to consider the need to eliminate discrimination and promote equality of opportunity[29], and
- be compatible with the Human Rights Act, for example the right to respect for family life. If eligibility criteria limit the availability of services in such a way that severe disruption is caused to a family's relationships with one another, this may be unlawful.

Since this is such a complicated area it may well be advisable to take legal advice if you suspect that your local authority is using eligibility criteria unlawfully. But, as we have seen, what is absolutely clear is that your local authority cannot use eligibility criteria to:

- refuse an initial assessment of need, or
- refuse to provide services listed in the CSDPA 1970 after an assessment has identified that those services are necessary.

27 R (JL) v Islington London Borough Council 2009.
28 This particular requirement appears in the Special Educational Needs and Disability Regulations 2014
29 In the Islington case referred to above, Mrs Justice Black held that in imposing eligibility criteria stipulating a maximum of 12 hours' provision for any given child, the local authority had breached equalities law.

It may be helpful to look at a few examples where the use of eligibility criteria may, or may not, be lawful.

- **Your local authority refuses to carry out an assessment of your child's social care needs because it says that only children with 'severe disabilities' are eligible for an assessment.**

  This would be unlawful since it goes beyond the statutory definition of a 'child in need', which doesn't say that a disability has to be 'severe'.

- **Your local authority carries out an assessment of your child's social care needs, and informs you that it's satisfied that it's necessary to provide support for him in the home. However, it says that your child can't have this support because it's run out of money, and because your child has received a 'score' indicating that his needs aren't severe enough to require the support that's necessary.**

  This is likely to be unlawful. Once your local authority has satisfied itself that particular services are necessary, it's under a duty to provide them, and can't use resource considerations or eligibility criteria to refuse to provide them.

- **Your local authority publishes eligibility criteria saying that only children scoring a certain number of 'points' will qualify for social care support, with points awarded on the basis of the level of need arising from the child's own disability as well as family/environmental factors.**

  This is likely to be lawful. In the Islington case referred to above (section 3.16), the Judge explained that there was no problem with a local authority using a points system to identify families with more pressing needs than others and determining that it would only provide services to those families. However, it isn't lawful to then specify a maximum number of support hours which could be provided to eligible families.

- **Your local authority carries out an assessment and then informs you that it's decided not to provide any support to your family on the basis that 'you haven't satisfied our eligibility criteria'.**

  If the local authority doesn't explain why you don't meet its published eligibility criteria this could well be unlawful, even if the underlying eligibility criteria are not unlawful in their own right. local authorities must be transparent and they must publish any eligibility criteria which they use to decide access to social care services.

3.17 Will my own needs be assessed as well?

Yes, your needs are an integral part of the assessment of your child's needs. Your child's assessment should be 'holistic', meaning that it should take into account your needs and the needs of other family members (and 'significant others').

Your local authority has a duty to assess whether you, as a parent carer, have needs for support[30] and, if so, what those needs are. This duty comes into play as soon as it appears to your local authority that you may need support or if you request an assessment[31]. This is known as a parent carer needs assessment (PCNA), and can be carried out at the same time as an assessment of your child's own needs. The PCNA must include an assessment of whether it is appropriate for you to provide (or to continue to provide) care for your child in the light of your needs for support, as well as your other needs and wishes, for instance,

30 See 'Working Together', Paragraph 31 on Page 64.

31 See 'Working Together', Paragraph 29 on Page 21.

whether you want to work or take part in any education, training or recreation activities[32].

When carrying out the PCNA, your local authority must have regard to both your own well-being and the need to safeguard and promote the welfare of both your disabled child, and any other child who you have parental responsibility for.

"Well-being" includes the following:

- physical and mental health and emotional well-being;
- protection from abuse;
- control over day-to-day life (including over the care and support provided to the individual and the way in which it is provided);
- participation in work, education, training or recreation;
- social and economic well-being;
- domestic, family and personal relationships;
- the individual's contribution to society.

When it carries out your PCNA, the local authority must involve you, any child you have parental responsibility for, and any other person you ask them to speak to (e.g. other family members). Having carried out the assessment, the local authority must provide you, and anybody else you name, with a written record of the outcome.

The local authority must take the results of your PCNA into account when deciding what services, if any, to provide to your child and your family. It must also consider whether you have any needs in your own right independent of those of your child (for example because you have a disability or illness). If so, you may be entitled in your own right to a 'needs assessment'[33].

32 Please see 'Working Together', Paragraph 31 on Page 64.

33 Section 9 of the Care Act 2014.

4. What can Local Authorities do for us?

What help and support can we receive following an assessment?

There is a range of different social care services which your local authority can provide for you and your disabled child. Including:

- Accommodation
- Assistance in finding accommodation
- Day centres and other facilities
- Advice and support from social services
- Occupational, social, cultural or recreational activities
- Advice, guidance and counselling
- Home adaptations and 'additional facilities designed to secure the person's greater safety, comfort or convenience'
- Services in the home:
  - practical assistance in the home, including home help and laundry facilities,
  - provision of meals, whether in the person's home or elsewhere
  - domiciliary and care services to people living in their own homes and elsewhere
- Provision of travel and other assistance to enable the person to participate in services provided
- Providing, or helping the person to obtain a 'telephone and any special equipment necessary to enable him to use a telephone'
- Providing, or helping the person to obtain 'wireless, television, library or similar recreational facilities'
- Provision of lectures, games, outings or other recreational facilities outside the person's home or assistance in helping the person in taking advantage of available educational facilities
- Services to minimise the effect on disabled children of their disabilities or give such children the opportunity to lead lives which are as normal as possible (such as short-term breaks)
- Facilitating holidays
- Short term breaks ('respite care')
- Direct payments and personal budgets

If your local authority decides that your child and your family need help and support, then it must decide what type of help and support should be given. The type of help and support offered to you and your family will depend on your assessed needs.

If any identified needs can be addressed by services in your home or in a community setting, then they will generally be provided under section 2 of the Chronically Sick and Disabled Persons Act 1970 (CSDPA) and the local authority must provide support to meet these needs. This includes the following services:

This includes the following services:

- Practical assistance in the family home such as home help, personal care, equipment and a sitting service
- Community-based services such as a day centre, after-school club, holiday play scheme etc.
- Travel and other assistance to help your child participate in activities such as recreation or education
- Adaptations to the home

If you or your family are finding it difficult to cope, then the Local Authority will need to consider what support is required. This might mean that you are provided with services known as 'respite care' or 'short term breaks'. While these may be described as services to you and your family they are, in fact, services for your disabled child because they are helping you and your family support her. They also support your child's need by helping

to prevent your family being pulled apart by the pressures of caring for a disabled child.

Short term breaks include the provision of a 'sitting service' (i.e. someone to look after your child in your home), an overnight 'in home' service or your child spending time in a community-based day care facility. Such breaks could also include her spending a short time in residential accommodation. The provision of accommodation for her both on a temporary basis (as 'respite care' or 'short breaks'), or on a longer term basis is discussed below.

The help and support that the local authority has decided to give to your child and your family must be set out in a care plan (which might also be called a 'plan of action' or a 'support plan'). The contents of the care plan should be discussed and agreed with you and your child[34]. If you're informed that no services or support will be provided to you and/or your child, you may want to make a complaint (please see section 8 on page 33).

4.2 Will we be charged for the services that are provided?

It is possible for your local authority to charge for the services it provides to children[35]. If your child's under 16, it can take into account your financial circumstances. And if she is 16 or over, then it can take into account her own means. While it's true that local authorities don't usually charge for the services they provide to disabled children, this may change in the future if further cuts are made to children's services budgets. However, your local authority can't charge more than you can 'reasonably' afford, and you can't be charged if you're receiving income support or other benefits[36].

4.3 What should I do if my family needs a break from caring?

You should ask for an assessment of both your needs (a Parent Carer Needs Assessment) and your child's needs (a child in need assessment).

The need for families to have breaks from caring is now well recognised. As discussed above, it may be possible for short-term breaks to be arranged by providing support in the family home, such as a sitting services for your child while you and other members of your family go out. However, sometimes it might be necessary for your child to spend a short time away from the family home. This is when short-term residential accommodation should be considered. While 'residential short breaks' aren't one of the services listed in section 2 of CSDPA your local authority can still provide them. In fact, local authorities have a duty to provide services to give carers breaks from caring[37].

The government has even gone as far as making specific regulations covering breaks for carers[38]. According to these regulations local authorities must consider the needs of carers who would be able care more effectively for their children if they were given breaks from caring. These breaks could be used to access education, training or any regular leisure activity so that carers can meet the needs of their other children more effectively or carry out day-to-day household tasks. Local authorities must provide a range of short break services, including:.

- daytime care,
- overnight care,
- educational activities,
- leisure activities, and
- services to assist carers in the evenings, at weekends and during school holidays.

34 See 'Working Together', Paragraph 64 on Page 29.
35 This applies to services provided under CSDPA 1970 or under the Children Act 1989.
36 See section 29 (3) of the Children Act 1989.
37 Paragraph 6(1)(c) of Schedule 2 to the Children Act 1989.
38 Breaks for Carers of Disabled Children Regulations 2011.

4.4 Does our local authority have to publish information about short breaks?

Yes, it must set out its short break services in a document called a 'Short Breaks Services Statement'. It must also detail any eligibility criteria that you have to meet in order to access these services[39]. If you can't find the Statement easily (e.g. online), you should contact your local authority and ask for a copy. If you ever need to make a complaint your local authority's 'Short Breaks Services Statement' could be very important since, generally speaking, it has to follow its own published policies.

4.5 Is it true that I will only get help in the form of a short breaks service if my family is in a crisis situation?

No. If you and your family have reached crisis point and the only appropriate way of supporting you is to provide accommodation for your child, then your local authority must arrange it.[40]However, it isn't the only time that you can get help.

Guidance issued by the Department for Education in 2011, 'Short Breaks for Carers of Disabled Children: Departmental Advice for Local Authorities' (please see Resources section on page 38), makes it clear that 'families should not have to reach crisis point before they receive a short break' [41]. It gives examples of when short-term breaks will have a positive impact, namely where a carer is:

- unable to attend regular training, education or leisure activities because of the level of care required by the child;
- unable, or limited in their ability, to provide care for other members of the family or attend to maintenance of the household because of the care needed by the child;
- struggling to find the capacity to care for the disabled child without a short break; and
- where the provision of short breaks would clearly enable a carer to provide more effective parenting and care.

If you think that your situation is similar to any of these examples you may want to ask for a short-term break. In deciding whether or not to agree to your request your local authority could apply eligibility criteria (see section 3.16 on page 17). However, it'll still have to meet the needs of your child by taking some form of action if intervention is 'required to secure' your child's well-being.

4.6 What if my child's support needs mean that I can't provide care at home anymore?

If you and your family are finding it difficult to cope with caring for your disabled child then you should ask for an assessment of your child's needs, as well as a parent carer needs assessment (please see section 3.17 on page 19). You might find that by asking for your child's care plan to be revised that you get increased services. This could include, but isn't necessarily limited to, short-term breaks, so that you and your family can give your child the help and support that she needs.

Your local authority should try to do everything it can to enable your disabled child to remain with your family. This will probably mean asking other agencies, such as the NHS, to help assess your child's needs.

You, together with your child and other members of your family, should be involved in deciding what help and support can be provided so that she can continue to live at home. However, it's possible that her disability and/or health care needs are of such a high level and/or severity that it's no longer

39 Regulations 5(1) and 5(2) in Breaks for Carers of Disabled Children 2011.

40 Section 20 of the Children Act 1989

41 Short Breaks for Carers of Disabled Children: Departmental Advice for Local Authorities, Paragraphs 1.2 and 1.3 on Page 7.

possible you to care for her in the family home.

If your local authority decides that you and your family can't provide your child with care or accommodation it will have to arrange accommodation for her.[42] It doesn't matter whether the situation is likely to be temporary or permanent, nor does it matter why it's happened.

If she's school-aged then a residential school placement might be appropriate.

4.7 Will my child and I be consulted about a placement away from home?

Your local authority won't be able to place your child away from home if you, or anyone else with parental responsibility, objects. If they wanted to do so without your agreement they'd have to start care proceedings. Importantly, before arranging a placement the local authority will need to find out your child's wishes and feelings and take them into account when making any decisions.

4.8 I have been told that my child is a 'looked after child' – what does this mean?

As in the case of eligibility criteria this can be a confusing area for parents and, unfortunately, it isn't possible to answer this question without going into some technical detail.

The definition of a 'looked after child' includes children who have a care order under section 31 of the Children Act 1989. It also includes some children and young people under the age of 18 who have been accommodated under section 20 of the Children Act 1989, including those who are accommodated away from home even for a short period as part of the local authority's short break services.

If your child is receiving short-term break services under section 17 of the Children Act 1989, she won't be a 'looked after child',section 20 of the Children Act 1989. In short:

- If your child is being provided with accommodation under section 20 of the Children Act 1989, she will be a 'looked after child' if the placement lasts for a continuous period of more than 24 hours.
- If your child is being provided with short break accommodation for 24 hours or less, then she isn't a 'looked after child' even if the accommodation is being provided under section 20 of the Children Act 1989.
- If your child is provided with accommodation under section 17 of the Children Act 1989, she won't be a 'looked after child'.

Local authorities are required to provide a range of support to young people that are, or have been, 'looked after children' as they move into adulthood. The extent of the local authority's responsibilities will depend on how often your child receives short-term breaks and how long each of these breaks last. If they don't last more than the periods set out below, then the local authority's support will be focused on the preparation of a 'short-term break plan', the purpose of which is to ensure that your child needs are met while they're away from you.

The relevant periods are as follows:

- if the child receives the short breaks in the same setting; and no single placement lasts for more than 17 days; and the total of the short breaks in one year is 75 days or less.[43]

See the Resources section on page 38 for further information on the range of 'leaving care' support that Local Authorities have to provide.

42 Under section 20 of the Children Act 1989.

43 Care Planning, Placement and Case Review (England) Regulations 2010 SI no 959, paragraph 48.

5. Direct Payments and Personal Budgets

5.1 Can we arrange the services ourselves?

Yes. You can ask your local authority to pay you so that you can, in turn, arrange and pay for the services yourself. The money that the local authority gives you is known as 'direct payments'.

Basically, if your local authority decides to provide you and/or your child with support services you have three choices:

- you can ask your local authority to arrange all of the agreed services itself; or
- you can ask your local authority to pay you direct payments so that you can arrange and pay for all of the services yourself; or
- you can ask your local authority to arrange some of the services and to pay you direct payments to enable you to pay for services you want to arrange yourself.

Direct payments can cover a wide range of services as long as they are set out in your child's care plan or your support plan, if you have one. However, they can't be used to pay for services actually provided by the local authority, nor can most local authorities allow them to be used to pay for long periods of residential care (please see section 5.2 below).

Direct payments can be paid to you on behalf of your disabled child until he becomes 18. However, young people aged 16 and over have the right to manage their own direct payments if they've got sufficient mental capacity to do so, even if they need some help. If you use direct payments to employ someone (such as a carer or personal assistant), the amount of the payment you receive should be sufficient to pay all additional costs – such as Employers National Insurance contributions, holiday pay, employers liability insurance and, depending on the number of hours worked, pension contributions and maternity/paternity pay.

The Government has issued Regulations[44] explaining the rules covering direct payments but, in short, you'll have the right to get direct payments if you ask for them and your local authority is satisfied that:

- you're capable of managing the direct payment by yourself or with assistance;
- your child's need for a particular service can be met by way of a direct payment; and
- his welfare will be safeguarded and promoted by a direct payment for the service he or she needs.

Some local authorities provided a 'managed' service which can help with the administration of employing someone such as dealing with the payroll (calculating wages, producing a wage slip, etc.), paying Employer National Insurance contributions and helping with the recruitment of personal assistants.

5.2 Are there any other restrictions on the availability of direct payments?

Yes, there are a couple of other restrictions on direct payments. The main one being that they can be used to pay a relative who lives in the same household as long as the local authority believes that it's 'necessary'[45]. Also, most local authorities can't allow direct payments to be used to pay for any single period of residential respite care exceeding 4 weeks or any periods exceeding 120 days in total during any 12-month period,

44 Care and Support (Direct Payment) regulations 2014.

45 Please see Regulation 3 of the Care and Support (Direct Payment) regulations 2014: 18 local authorities are exempted from this restriction: besides meeting care needs a person living in the same household can provide administrative and management support or services

although this doesn't apply to all of them [46]. Apart from these restrictions, the general position is that you have the right to insist on a direct payment in order to buy the services which have been assessed as necessary to meet your child's needs. If she's already receiving services directly from your local authority, you can ask for these to be replaced by direct payments. As explained above, you can also request a 'mixed' package where some services are provided directly by the local authority, and you are provided with direct payments to pay for others.

Please note that your local authority can't insist that you take direct payments. If you don't want them for one reason or another, or if you're already receiving them and want to change your mind, then let the local authority know and it'll need to arrange the agreed support services itself.

5.3 What is a 'personal budget'?

A 'personal budget' is local authority money given to individuals to manage their care costs as set out in an agreed support plan following a full assessment and financial allocation by the local authority.

- As a direct (cash) payment held by the individual (that's to say, a 'direct payment' as discussed above);
- An account held and managed by the local authority in line with the person's wishes;
- An account placed with a third party and managed by the individual or by carers, friends or trustees;
- As a mixture of the above.

Not all local authorities have developed 'personal budgets' for disabled children's services. Personal budgets are just one way in which the local authority can meet the assessed needs of your child and your family. Your child, or you and your family, can still insist that your local authority provides the services to meet these needs.

Alternatively, if your child or you and your family want, you can still ask for a direct payment. The amount of the payment must be enough to pay for the services identified as necessary by the assessment.

5.4 How have changes to the law affected direct payments/ personal budgets?

Since the special educational needs reforms were introduced, you have a right to ask your local authority to arrange a personal budget to pay for the provision, including the social care provision, specified in your child's EHC plan[47]. We look at this in detail in our 'Education in England: A Guide for Parents' publication.

46 Please see Regulation 6 and Schedule 2 of the Care and Support (Direct Payment) regulations 2014: 18 local authorities are exempted from this restriction.

47 Section 49 of the Children and Families Act 2014

6. Care Plans

6.1 What should be in my child's care plan?

Your local authority should produce a 'care plan' based on the findings of the assessment of your child's needs and the information that you and your family have provided. You should be given a copy of the plan. 'Working Together' is clear that this plan should be agreed between the social worker who carried out the assessment, her manager and any other professionals. Importantly, it should be discussed with both your child and your family. It should set out 'what services are to be delivered, and what actions are to be undertaken, by whom and for what purpose'[48] It should include agreed objectives for your child, such as health and development objectives, and how progress will be measured. These are necessary in order to check that your child and your family are being given the right kind of services and support.

The guidance which 'Working Together' replaced said that care plans should be reviewed at least every six months, and this continues to represent a sensible maximum timeframe for care plan review.[49]

You and your child should be involved in the review process, as should the professionals who have a key role in providing the care and support to your child and family under the existing plan. If you have minor concerns with the package of care your child is receiving, then a care plan review meeting is a useful opportunity to raise these. However, if you have more serious concerns don't wait for an arranged meeting: you should raise them immediately with your local authority (by making an official complaint if necessary).

6.2 How often will the care plan be reviewed?

The Working Together guidance does not specify how often a care plan should be reviewed, simply providing that it should be reviewed "regularly". This fits with the approach to timescales for assessment; essentially, the key question is reasonableness. In particular, if there is a change in your child's circumstances (e.g. a deterioration in a physical or mental condition) then it will likely be necessary for your local authority to review the care that is being provided without delay, and irrespective of when the care plan was most recently updated.

The guidance which preceded Working Together (the Framework for the Assessment of Children in Need and their Families) specified that care plans should be reviewed at least every six months, and this continues to represent a sensible maximum timeframe for care plan review (although notably EHC plans must be reviewed at least every 12 months under the Children and Families Act 2014: see below).

You and your child should be involved in the review process, as should the professionals who have a key role in providing the care and support to your child and family under the existing plan. If you have minor concerns with the package of care your child is receiving then a care plan review meeting is a useful opportunity to raise these; however, for more serious concerns, you should not feel the need to wait until an arranged meeting and should raise them with your local authority directly (via their complaints procedure if necessary).

48 Paragraph 64 on Page 29.

49 However, please note that as referenced in 49 below EHC plans must be reviewed at least every 12 months.

6.3 How is social care dealt with in the new Education, Health and Care (EHC) plans?

If your child has an EHC plan, any social care provision should be included in the EHC plan itself.

Section H1 of the EHC plan should set out the provision which is to be made under section 2 of CSDPA 1970. The SEND Code of Practice states[50] that the provision in question should be detailed, specific and quantified, setting out the type of support and who will provide it (including whether it is to be provided by way of a direct payment).

Section H2 of the EHC plan should include any other social care provision not provided under CSDPA 1970 but which is "reasonably required by the learning difficulties or disabilities which result in the child...having SEN". In practice, this is most likely to refer to residential short breaks (which as discussed above can't be provided under CSDPA 1970).

EHC plans must be reviewed at least every 12 months[51], at which stage the effectiveness of the specified social care provision should be considered. A social care representative must be invited to the review meeting and given two-weeks' notice[52].

50 Page 167.
51 Section 44 of the Children and Families Act 2014.
52 SEND Code of Practice, Paragraph 9.176.

7. The Equality Act 2010 and social care services

The purpose of the Equality Act 2010 is to protect certain groups of people, including disabled people, from discrimination. It also requires public bodies, such as local authorities, to take action to eliminate discrimination from within their organisations and in the way it carries out its duties (this is known as the 'public sector equality duty' (PSED) and you can find more information about it below in section 7.6).

7.1 What protection does the Equality Act 2010 offer my child?

The Equality Act 2010 offers people with a 'protected characteristic' protection from discrimination, harassment and victimisation and one of these 'protected characteristics' is disability, which we're going to look at in this section.

Your child will be covered by the Equality Act 2010 if he has a physical or mental impairment giving rise to a substantial, long-term adverse effect on their ability to carry out normal day-to-day activities (this is a definition which resembles, but does not exactly match, the definition of a disability in the Children Act 1989 which we discussed in section 1.1 on page 5). As a disabled child, your child will receive protection when asking for services, using services and, in certain circumstances, once he's no longer receiving the service.

The Equality and Human Rights Commission (EHRC) has issued a range of guidance on the Equality Act including the 'Services, public functions and associations: Statutory Code of Practice' (known as 'The Services Code').

7.2 What protection does the Equality Act 2010 offer for my child when receiving social care services?

The Act makes it unlawful for service providers to discriminate against your child:

- by refusing to provide your child with the service;
- by not providing your child with the same level of service or in the same manner or on the same terms as they would usually give to members of the public or to a section of the public to which they belong, such as hospital outpatients;
- by terminating the provision of the service; and/or
- by subjecting your child to any other detriment[53].

In addition, a service provider mustn't engage in discrimination, harassment or victimisation when exercising a public function. The interpretation of this is broad and the 'Services Code'[54] explains that 'refusing to allow someone to benefit from the exercise of a function or treating someone in a worse manner in the exercise of a function' are examples of the types of discrimination that would be covered by the Act.

53 'Detriment' is not defined in the Act and has a broad meaning. The Services Code (paragraph 9.7) explains that while it does not need to have any physical or economic consequences, it should amount to something a service user 'might reasonably consider changed their position for the worse or put them at a disadvantage'.

54 Paragraph 11.26.

7.3 What are the different forms of discrimination?

These are summarised below:

- Direct discrimination – treating one person less favourably than another person because of a protected characteristic.

  Example: an Accident and Emergency service refusing to treat a child who has fallen out of a tree because the child has Down's Syndrome and the service does not believe it has the necessary expertise to treat the child as a result.

  Generally direct discrimination cannot be justified; however, in relation to age, direct discrimination can be justified if it is a proportionate means of achieving a legitimate aim. It is always lawful to treat a disabled person more favourably than a non-disabled person because of their disability.

  Direct discrimination by association and direct discrimination by perception are also unlawful. 'Direct discrimination by association' means discriminating against a person on the basis of their association with another person who has a protected characteristic (e.g. turning someone down for employment on the basis that they have caring responsibilities for a disabled child and so will be unable to focus on the job). 'Direct discrimination by perception' means discriminating against someone because it is believed that they have a protected characteristic, whether or not that is actually the case.

- Indirect discrimination – Indirect discrimination is where there is a rule, policy or practice which seems to apply equally to everyone, but which actually puts disabled people at an unfair disadvantage compared with people who aren't disabled.

  Example: a local authority produces an information leaflet about its services for local people. However, it doesn't produce an easy-to-read version of the leaflet in order to save money. This would make it more difficult for someone with a learning disability to access the services and could amount to indirect discrimination.

  Please note that sometimes it's legally possible to justify the rule, policy or practice that puts disabled people at a disadvantage. For example, there could be a health and safety reason, or an unavoidable business reason. Where this is the case, it won't count as discrimination.[55]

- A failure to make reasonable adjustments for a disabled person – please see section 7.4 below.

  Example: a school refuses to pay the extra money to hire a wheelchair accessible coach to enable one of their disabled children to go on a school trip with his classmates.

- Discrimination arising from disability – treating a disabled person unfavourably because of something caused by his disability, unless it can be shown that the treatment is lawful. If the service provider has failed to make an appropriate reasonable adjustment, it will be very difficult for them to prove that they have acted lawfully. If the service provider didn't know and couldn't reasonably have been expected to know that the person was disabled, the unfavourable treatment won't be considered to be disability discrimination.

55 You can find more information on justifying discrimination here.

Example: a child with ADHD is turned down for a respite break as his social services department considers his challenging behaviour (which is an involuntary consequence of his disability) will be too disruptive for other children. It would be difficult for the social services department to justify its decision if it fails to make (or at least seriously considers making) a reasonable adjustment which could have prevented or at least minimised the challenging behaviour.

7.4 How does the reasonable adjustments duty apply to services provided by our local authority?

The reasonable adjustment duty is an anticipatory and continuing duty owed to all disabled service users. This means that your local authority must be proactive and think about and plan for the needs of their disabled service users in general and not wait until an individual disabled person turns up with an individual request.

Both service providers and those exercising a public function[56] are required to take reasonable steps to:

- avoid practices, services and eligibility criteria which put disabled service users at a substantial disadvantage[57];
- avoid physical features which put disabled service users at a substantial disadvantage (this could mean removing the feature in question, altering it or providing a reasonable means of avoiding it, or where the disadvantage can't be avoided, by providing a reasonable alternative means of providing the service or exercising the function);
- provide an auxiliary aid or service where a failure to do so would put a disabled service user at a substantial disadvantage.

Example: a physiotherapy service changes the usual length of their appointments to allow extra time for a girl with cerebral palsy who communicates using a communication aid with the support of her personal assistant. This is likely to be a reasonable adjustment to make.

- ensure that information about any provision, practice, eligibility criterion, auxiliary aid or service is provided in an accessible format.

7.5 Can local authorities charge us for the cost of making a reasonable adjustment?

No, neither you nor your child can be charged for the cost of making a reasonable adjustment.

7.6 What is the public sector equality duty and how is it relevant to our local authority?

The public sector equality duty was introduced to eliminate discrimination from public bodies and consists of two parts:

- a general duty, and
- a set of specific duties.

Not all public bodies[58] are subject to both parts of the duty.

Organisations which are not public bodies but carry out a public function as part of their work will have to comply with the general part of the duty when they carry out that particular function.

56 A public function is a function of a public nature for the purposes of the Human Rights Act 1998.

57 Anything that is more than minor or trivial is a substantial disadvantage.

58 The Equality Duty applies to public bodies listed in Schedule 19 to the Act, and to other organisations when they are carrying out public functions.

Your local authority is a public body and is subject to both the general and the specific public sector equality duties. If an individual member of staff carries out a public function as part of his job, then he'll be subject to the general public sector equality duty when carrying out that part of his role. The public sector equality duty covers all the protected characteristics.

The general duty has three aims:

- the elimination of discrimination, harassment, victimisation and any other conduct which is prohibited by the Equality Act 2010
- the advancement of equality of opportunity between people who share a protected characteristic and those who do not, and
- the fostering of good relations between people who share a protected characteristic and those who do not.

The specific duties required all local authorities to publish enough information to demonstrate that they were complying with the aims of the general equality duty by 31 January 2012 and to publish one or more equality objectives by 6th April 2012. Since then, local authorities have been required to revise and republish both sets of information at least every four years.

7.7 Am I protected from discrimination because of my relationship with my disabled child?

Yes, you are protected from direct discrimination (and harassment) if you are treated less favourably than others because you have a disabled child by, for example, your child's service provider, education provider or your employer. This is known as 'discrimination by association'.

8. Complaints: summary of potential remedies

In this section we take a general look at how you can make a complaint about the services and decisions you get from your local authority's children social care services. Please see the Resources section on page 38 for details of where to get further information and support.

8.1 Can I make a complaint if I am not happy with aspects of my child's care?

Yes, if you're concerned about anything to do with the care your child's getting you have the right to complain. This could be about how services are being provided, how much support she or your family have been offered or a decision not to provide a particular (or any) service. You can also complain if your local authority refuses to assess her or your needs.

8.2 What do I need to think about when deciding on whether, and how, to make a complaint?

The different complaints procedures that might be available to you are listed below. You might also find it helpful to consider informal routes to raise your concerns. Often the most effective way of resolving such disputes can be through informal contacts with your local authority's officers. Involving your local MP, local councillor or even the local media, may add weight to your arguments. Usually, it is important to make complaints straightaway.

The deadlines for court proceedings can be very tight so if they are a possibility it is advisable to take expert advice urgently.

The best course of action to take will depend on a number of things, including the reason for your complaint and the likely costs involved. For example, while taking legal action by way of judicial review proceedings can lead to an early resolution, it will probably be very expensive unless legal aid is available and might not be appropriate if there are significant factual disputes.

8.3 How do I make a complaint?

Depending on the circumstances the following possibilities could be open to you:

- Children's social services provision: You (as a person with parental responsibility) or your child can make a complaint directly to your local authority. The complaint should be made as soon as possible and no later than 1 year from the time when you realised there was a problem. Every local authority has to have a special procedure for dealing with complaints about children's social care services and you should be able to find details about your local authority's procedure on its website. It is very important that you follow this procedure to the letter. The government has produced statutory guidance on how local authorities should deal with complaints about children's services called 'Children's social care: getting the best from complaints'; if you do decide to make a complaint it might be a good idea to familiarise yourself with it.
- Complaint to the Ombudsman: The Local Government and Social Care Ombudsman investigates complaints of 'maladministration'[59] made against local authorities in England (for example, complaints about the way in which a service is delivered, or where it isn't delivered at all). In most cases the you will be expected to have used the local authority's complaints procedure first. This is why it's very important for you to follow your local authority's

59 If the Ombudsman finds that a Local Authority has committed 'maladministration' it means that the s/he thinks that it has acted unreasonably.

- complaint procedure to the letter. If the Ombudsman thinks that the local authority hasn't been given a reasonable opportunity to consider your complaint and make any necessary corrections she might well decide not to take up your case. Please see the Resources section on page 38 for further information about complaining to the Ombudsman.
- Legal action: You can make an application to the High Court for a judicial review on behalf of your child if you think that your local authority has acted unlawfully.
- If you think that your local authority isn't complying with the Equality Act 2010 (please see section 7 on page 29) you could make a discrimination claim in the County Court. Claims in relation to the general public sector equality duty are brought by way of judicial review in the High Court. These can be brought by individuals, interested parties and/or the Equality and Human Rights Commission. The Commission can bring enforcement action in relation to specific duties. For more information about the procedure and time limits please see the Resources section on page 38.

Please note: if you're considering taking legal action you should take legal advice as soon as possible because the time limits are often very strict and short.

9. Glossary

Care Act 2014: the key legislation setting out the legal framework for the provision of social care for adults in England.

Children Act 1989: Children Act 1989: covers a wide range of areas concerning children. Part 3 of the Children Act 1989 concerns children 'in need' and their families: local authorities must safeguard and promote the welfare of those children in need living in the local authority area by providing services appropriate to their needs. So far as is consistent with their duty to safeguard and promote the welfare of children in need, local authorities must also provide services appropriate to those children's needs to promote their upbringing by their families. The definition of a 'child in need' is given below. For the purposes of this Act a child is a person under the age of 18.

Children and Families Act 2014: this Act contains a range of provisions, the most relevant of which for the purposes of this guide appear in Part 3. This part of the Act introduced significant reforms to the pre-existing statutory framework for identifying children and young people with special educational needs, assessing those needs, and making provision for them. The Act replaced what were previously called Statements of Special Educational Need or 'Learning Difficulty Assessments' with Education, Health and Care plans (which arise from a new integrated form of assessment, called an Education, Health and Care Assessment). The Act also introduced important provisions for the assessment of the needs of parents caring for disabled children.

Child in need: under the Children Act 1989 (Section 17(10)), a child is in need, for the purpose of the CA 1989 if:

- s/he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision of services for him or her by a local authority; orhis/her health or development is likely to be significantly impaired or further impaired without the provision for him or her of such services; or
- his/her health or development is likely to be significantly impaired or further impaired without the provision for him or her of such services; or
- if s/he is disabled (see below for definition of disabled child).

Child in need assessment: an assessment by a local authority of the services and support which should be provided for any child in need in its area. A detailed description on the principles governing such assessments is provided in the statutory guidance entitled Working Together to Safeguard Children (see below).

Chronically Sick and Disabled Persons Act 1970 ('CSDPA 1970'): this Act includes, among other things, the specific statutory duty on local authorities to provide social care services for disabled children. (The provisions of CSDPA 1970 which relate to adults have now been superseded by the Care Act 2014.)

Disabled child s, for the purpose of the Children Act 1989: '...a child who is blind, deaf or dumb or suffers from mental disorder of any kind or is substantially and permanently handicapped by illness, injury or congenital deformity or such other disability that may be prescribed' (Section 17(10) Children Act 1989).

Education, Health and Care (EHC) needs assessments/plans: The Children and Families Act 2014 introduced a specific duty for local authorities to assess, on request, the educational, health care and social care needs of a child or young person. This is referred to in the Act as an 'EHC needs assessment'. Where such an assessment is carried out and the local authority concludes that the child/young person in question requires special educational provision, then it must prepare and maintain an 'EHC plan' for them, specifying (among other things) that child's special educational needs and the special educational

provision required, as well as any associated social care/health care needs and provision.

Eligibility criteria: these are the criteria used by children's services and local social services authorities to assess the level of need of a person and determine whether s/he qualifies for a service. Guidance issued in England has standardised local authority eligibility criteria for community care services (thus in general, adult services) but no guidance has been issued in relation to children's services.

Harassment: under the Equality Act 2010 in a services context: The Act prohibits three different types of harassment:

- Harassment related to a 'relevant protected characteristic' (not pregnancy and maternity, religion or belief or sexual orientation in a services context; harassment related to pregnancy and maternity would amount to harassment related to sex, while harassment related to religion or belief or sexual orientation may amount to direct religion or belief or sexual orientation discrimination);
- Sexual harassment, and less favourable treatment because of submission to or rejection of sexual harassment or harassment related to sex or gender reassignment.
- Clearly in relation to sexual harassment of a child, other legislation will be relevant including that which covers criminal behaviour.

Human Rights Act 1998: this Act places an obligation on public bodies such as local authorities to work in accordance with the rights set out under the European Convention on Human Rights ('ECHR'). This means that individuals working for public authorities, whether in the delivery of services to the public or devising policies and procedures, must ensure that they take the ECHR into account when carrying out their day to day work.

Looked after child: A child is looked after by a local authority if s/he is in their care by reason of a care order or is being provided with accommodation under section 20 of the 1989 Act for more than 24 hours with the agreement of the parents, or of the child if s/he is aged 16 or over (section 22(1) and (2) of the 1989 Act).

Local authority children's social care services: this term is used to describe the department of the local authority that is responsible for the provision of services to children in need (including disabled children). In England, the authorities divide the responsibility for the provision of social care to disabled people between a children's services directorate and an adult social services department.

Mental Capacity Act 2005:[60] The MCA 2005 provides the legal framework for making decisions on behalf of individuals aged 16 or over who lack capacity to make such decisions for themselves. Anything done for, and any decision made on behalf of, a person without capacity should be done or made in the 'best interests' of that person. For individuals aged 16 and over who lack capacity to make decisions for themselves, the MCA 2005 provides that 'acts in connection' with the person's care and treatment can be taken in the person's 'best interests'. In order to determine what might be in the person's best interests those involved in caring for the person (such as the parents) should be consulted. For further information see: https://webarchive.nationalarchives.gov.uk/+/http:/www.justice.gov.uk/docs/mca-cp.pdf

Non–statutory guidance: practical guidance aimed at helping people understand their rights and obligations under the relevant Act. Although it has no legal standing, it is something to which the local authority must have regard when carrying out their functions, and if they intend not to follow the guidance, they will have to be able to provide good reasons for so deciding.

60 The Mental Capacity (Amendment) Act 2019 will come into force in 2020 at a date still to be decided at the time of writing. It will introduce Liberty Protection Safeguards to replace Deprivation of Liberty Safeguards and will lower the age of their application to include 16- and 17-year olds.

Parent carers' needs assessments (PCNAs): (PCNAs): These were introduced by the Children and Families Act 2014. The legislation provides that wherever it appears to a local authority that a parent carer in its area may have needs for support, or the authority receive a request from the parent carer, it must carry out an assessment of those needs (provided that the child and his or her family are eligible in principle for support under section 17 of the Children Act 1989). In this context, a "parent carer" is a person aged 18 or over who provides care for a disabled child for whom that person has parental responsibility. It therefore covers not only biological parents but also (for example) guardians. Having carried out a PCNA, the local authority must consider the results and decide whether it is necessary to provide support for the parent carer along with any support for his or her disabled child.

Parental responsibility: This is a term defined in section 3 of the Children Act 1989 as 'the rights, duties, powers, responsibilities and authority which by law a parent has in relation to a child and his property'. Those working with children will need to ascertain who has 'parental responsibility'. This will be particularly important when the child is not able to make decisions about his or her care or treatment as in those circumstances a person with parental responsibility may be able to make that decision on behalf of the child. Usually both parents will have parental responsibility, but unmarried fathers will need to take steps to acquire parental responsibility. In some cases, parental responsibility may be shared with others, for example when the child or young person is subject to a care order the local authority will share parental responsibility with the parents (if both have parental responsibility).

Section 7 Guidance: This refers to guidance that has been issued under section 7 of the Local Authority Social Services Act 1970. This section requires local authorities in exercising their social services functions to act under the general guidance of the Secretary of State; unless there are exceptional reasons in individual cases, authorities are expected to comply with this guidance.

Special Educational Needs and Disability (SEND) Code of Practice: detailed statutory guidance (published jointly by the Department for Education and the Department of Health) on the duties, policies and procedures relating to Part 3 of the Children and Families Act 2014. Local authorities must have regard to this Code of Practice when taking relevant decisions in relation to children and young people. See Resources section.

Statutory guidance: guidance that has been approved by the Secretary of State and laid before Parliament. It is not an authoritative statement of the law. However, it can be used as evidence in court or tribunal proceedings connected with the relevant legislation and the court / tribunal must take into account any part of the guidance it considers relevant when determining the questions arising.

Victimisation: under the Equality Act 2010 in a services context: If a service provider subjects a service user or a person seeking to access a service to a detriment because they have carried out or the service provider believes they have or may carry out a 'protected act' this amounts to victimisation of the service user or the person seeking to access the service.

A 'protected act' is:

- Bringing proceedings under the Equality Act 2010 (the Act)
- Giving evidence or information in connection with proceedings brought under the Act
- Doing anything else for the purposes of or in connection with the Act
- Making an express or implicit allegation that another person has done something in breach of the Act (whether or not an allegation is later dropped).

Working Together to Safeguard Children: detailed statutory guidance on the statutory requirements and expectations for providers of children's services in relation to the promotion and safeguarding of children's welfare, including guidance on the duty of local authorities to carry out child in

need assessments. Local authorities and other organisations which commission and provide services for children are required to have regard to the guidance when taking relevant decisions in relation to children (see Resources below).

10. Resources

Useful Organisations

Carers UK

is a charity set up to help people who care for family or friends. Its work includes providing information and advice about caring: https://www.carersuk.org/

Citizens Advice Bureau

a source of advice and support if you want to complain about social services or local authorities: https://www.citizensadvice.org.uk/

Contact

(formerly Contact a Family): Provides support, information and advice to families of disabled children: https://www.contact.org.uk/

Equality and Human Rights Commission (EHRC)

its role is to promote and monitor human rights; and to protect, enforce and promote equality across the nine 'protected characteristics' under the Equality Act 2010 - age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex and sexual orientation: https://www.equalityhumanrights.com/en

Local Government Ombudsman

looks at complaints about councils (local authorities) and some other authorities and organisations, including education admissions appeal panels and adult social care providers (such as care homes and home care providers). It is a free service: https://www.lgo.org.uk/

Public Law Project (PLP)

is an independent, national legal charity which aims to improve access to public law remedies for those whose access is restricted by poverty, discrimination or other similar barriers. Its website includes a guide to making a complaint. https://publiclawproject.org.uk/

Further information and guidance

For information on other topics such as education, please see our Parent Guides available on our website: https://www.cerebra.org.uk/help-and-information/guides-for-parents/

Assessments for children in need

Department for Education, Working together to safeguard children: A guide to inter-agency working to safeguard and promote the welfare of children (Published: March 2015/ Updated: February 2019): https://www.gov.uk/government/publications/working-together-to-safeguard-children--2

Office of the Children's Rights Director, Working Together to Safeguard Children July 2017: https://www.childrenscommissioner.gov.uk/publication/working-together-to-safeguard-children/

Care planning for looked after children and care leavers

A range of information, including the Children Act 1989 Guidance and Regulations Volume 2: Care Planning, Placement and Case Review (June 2015) and Volume 3 Planning transition to adulthood for care leavers (January 2015) is available at: https://www.gov.uk/government/publications/children-act-1989-care-planning-placement-and-case-review

Complaints

Local Government and Social Care Ombudsman (LGO): https://www.lgo.org.uk/

LGO's factsheet on complaints about children's care services: https://www.lgo.org.uk/make-a-complaint/fact-sheets/social-care/social-care-for-children/children-s-care-services

Information provided by the Home Office on the process for complaints under the Equality Act 2010: https://www.gov.uk/guidance/equality-act-2010-guidance

Information is also available on the EHRC's website: https://www.equalityhumanrights.com/en/complaint-policy-and-procedure

Education, Health and Care Assessments

Department of Education, Special Educational Needs and Disability Code of Practice: 0 to 25 years, January 2015: https://www.gov.uk/government/publications/send-code-of-practice-0-to-25

Equality Act 2010 and social care services

Equality and Human Rights Commission, Services, Public functions and Associations: Statutory Code of Practice: https://www.equalityhumanrights.com/en/publication-download/services-public-functions-and-associations-statutory-code-practice

Office for Disability Issues, Equality Act 2010: Guidance on matters to be taken into account in determining questions relating to the definition of disability (2011) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/570382/Equality_Act_2010-disability_definition.pdf

Equality and Human Rights Commission, Technical guidance on the Public Sector Equality Duty https://www.equalityhumanrights.com/en/publication-download/technical-guidance-public-sector-equality-duty-england

Legal references

Steve Broach, Luke Clements, and Janet Read, Disabled Children: A Legal Handbook, LAG & Council for Disabled Children, 2016. Available online at: https://councilfordisabledchildren.org.uk/help-resources/resources/disabled-children-legal-handbook-3rd-edition

Luke Clements and Pauline Thompson, Community Care and the Law, LAG, 5th Edition, 2011

National Service Frameworks for Children

Department of Health, National Service Framework for Children, Young People and Maternity Services: Standard 8: Disabled children and young people and those with complex health needs (2004): https://www.gov.uk/government/publications/national-service-framework-children-young-people-and-maternity-services

Parent Carers' Needs Assessments

Carers UK's factsheet on Assessments and the Care Act (page 17): https://www.carersuk.org/help-and-advice/practical-support/getting-care-and-support/young-carers-and-carers-of-children-under-18

Short term breaks

Department for Education, Short breaks for carers of disabled children: Departmental advice for local authorities (March 2011): https://www.gov.uk/apply-short-term-care-for-child

About the Authors

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Camilla provides training and consultancy services on human rights and equality, and other areas of law and policy relevant to education, health and social care.

Camilla specialises in mental health, disability and human rights law and policy and has written, presented and trained extensively on issues relevant to these areas, for specialist and non-specialist audiences, both nationally and internationally.

She is a member of the Law Society's Mental Health and Disability Committee and an LLM tutor at Cardiff Law School. She was a member of an NHS Trust Board (non-executive Director, then Special Adviser) 2000-2006 and a Mental Health Act Commissioner 1995-2000.

Camilla has a particular interest in the human rights of young people in need of mental health care, which is the subject of her (part-time) doctoral research at Cardiff Law School.

Luke Clements

Luke is a professor at Leeds Law School and a solicitor. He is a leading expert on community care law. He has drafted and assisted in the parliamentary passage of a number of Private Members bills. He has provided training for many Local Authorities, national organisations and charitable bodies.

His books include: Community Care and the Law (Legal ActionGroup 5th ed 2011–jointly written with Pauline Thompson), Disabled Children: a legal handbook (Legal Action Group 2010–jointly written with Stephen Broach and Janet Read) and Carers and their Rights (Carers UK 4th ed 2010).

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Jo specialises in discrimination, disability and education law and policy. Having practised as a solicitor for several years, both in private practice and the not for profit sector, Jo has been working as a legal and policy consultant since 2008.

Projects have included drafting Equality Act 2010 education guidance as part of a small consortium for the Equality and Human Rights Commission and training for the NHS. During her career, Jo has also been responsible for a university's policy and provision for its disabled students.

She has written, trained and presented on education and discrimination law and policy to a wide range of specialist audiences. Jo is a former Chair of the Law Society's Mental Health and Disability Committee and was a member of the Committee from 2003 to 2013. She has an MSc in Disability Management in Work and Rehabilitation.

All three authored Transitions in Mental Health Care: A guide for health and social care professionals on the legal framework for the care, treatment and support of young people with emotional and psychological problems during their transition years, YoungMinds (in association with National Mental Health Development Unit and National CAMHS support service).

About the Reviewers

Michael Armitage

Michael Armitage is a barrister at Monckton Chambers, specialising in public law and human rights, with a particular emphasis on children's rights (including disabled children's rights), education and social care. He regularly appears in the Administrative Court in judicial review proceedings where such issues are raised.

Derek Tilley

Derek Tilley is currently working as part of the Cerebra Research Team and is the father of a young lady who happens to have Down's syndrome. As a result of his dealings with public services he has had a long interest in supporting parents with disabled children access their legal entitlements. Firstly, in the area of special educational needs with IPSEA and SNAP Cymru Parent Partnership Services before moving into the area of direct payments with Diverse Cymru. During this period Derek served as a third sector representative on the Cardiff Disabled Children's Strategy Development Group and the Cardiff Autism Strategy Development Group. He recently successfully completed an MSc in Social Science Research Methods at Cardiff University and is carrying out a PhD under the supervision of Professor Sally Power, Director of WISERD Education, Cardiff University, and Doctor Julie Doughty, School of Law and Politics, Cardiff University, exploring issues related to the reoccurring problems parents of disabled children have obtaining their rights from education, health and social services.

The findings of this report are those of the author, not necessarily those of Cerebra.

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Working wonders for children with brain conditions

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