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Working wonders for children with brain conditions

UNIVERSITY OF LEEDS

Challenging Parent Carer Blame:
Interim implementation research report 1:
Disability and human rights training and guidance for disabled children's assessors

Authors
Luke Clements and Ana Laura Aiello.

Student researchers:
Loreta Kate Aboma, Sara Ahmed, Pooja Ashokan, Sabah Ayub, Amturrehman Bhatti, Jack Bray, Imogen Brooks, Ella Casson, Mia Coles, Eva Cook, Edua Sara Csanadi, Helena Foulger, Scott Gentle, Kinsey Greenfield, Samanta Haji-Gaal, Natasha Hamilton Reyes, Rebecca Hamer, Niamh Harrison, Cally Hemstock, Marvyn Hilz, Clarisa Hoh, Abida Hoque, Ana-Maria Isuf, Priyanka Jain, Maryam Jamadar, Aliya Kanat, Olivia Lancaster, Nineka Logendran, Wing Victoria Lok, Ella Macmillan, Ethan McDonagh, Dylan McKenzie, Rui Miao, Mahsa Dalia Mirzai, Oliver Nichol, Amina A, Darcey O'Sullivan, Andrew Pan, Phung Pham Nguyen Hoang, Juliet Rudman, Holly-Louise Savage, Sabrina Tan, Melaku Tekle Zengeta, Niamh Turner, Sahiba Vig, Todd Whitworth, Rongxuan Xin, Nicole Zielinski.

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Cerebra

Cerebra is a national charity helping children with brain conditions and their families discover a better life together.

We work closely with our families to find out where help is most needed and then work with our university partners to fund the relevant research. Our research work across neurodevelopmental conditions gives us a unique perspective within the charity research sector.

Our aim is to provide research-driven, high-quality health and social care advice and support for the families of children with brain conditions from birth to the age of 16.

Legal Entitlements & Problem-Solving (LEaP) Project

The LEaP Project is an innovative problem-solving project that helps families of children with brain conditions cope with the legal barriers they face.

We listen to families and help them get the knowledge they need to access health, social care and other support services. We identify the common legal problems that prevent families getting access to services and we develop innovative ways of solving those problems. We aim to reach as many families as we can by sharing our solutions as widely as possible.

School of Law Leeds University Community Engagement

Community Engagement is fundamental to the ethos of the School of Law at the University of Leeds. Students are given every encouragement and support to use their legal skills to benefit the local community. In doing this, students develop these skills and deepen their understanding of the role of the law in the real world: the central role of the law in fostering social justice. In furtherance of this aim the School supports (among other initiatives) a number of law clinics and the Cerebra LEaP project.

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Research overview note

This report builds on 2021 research findings entitled 'Institutionalising parent carer blame':[1] research that concluded that social care policies in England create a default position for those assessing disabled children, that assumes parental failings. The research that underpins this report seeks to better understand the processes and practices in English children's services' authorities that have the effect of compounding / entrenching the negative experiences that many parent carers describe when they approach these authorities for support. The principal focus of this research concerns the extent to which English children's services' authorities provide adequate training and guidance to their 'needs assessors'.

Key Messages

- It appears that on average only 2.5 per cent of disabled children are (at any one time) receiving support from a Disabled Children's Team (para 5.20);
- The findings from the current research (and the 2021 research report) suggest strongly that local authorities have a one-size-fits-all approach to the assessment of children in need – regardless of whether the need arises from ill-treatment or disability (para 5.17).
- The research found no evidence that children's services authorities were providing training courses of a depth or weight that would provide assessors with an understanding of:
  - their statutory obligations to provide care and support to disabled children and their families (para 5.15);
  - the disability related challenges that disabled children and their families encounter (para 5.15);
  - their obligations under the Human Rights Act 1998 including their duties under Article 8 (to respect private and family life) and Article 14 (non-discrimination) (para 5.10);
- The training provided to assessors of disabled children had an overriding focus on 'safeguarding' rather than on support (para 5.15);
- The report concludes that the Secretary of State for Education must now be aware that local authorities have failed to develop and implement fit-for-purpose local assessment protocols, despite being instructed to do this in 2013 (para 5.18).

[1] L. Clements & A. L. Aiello *Institutionalising parent carer blame. The experiences of families with disabled children in their interactions with English local authority children's services departments* (Cerebra 2021).

1. Introduction

1.01 In 2021 the Cerebra Legal Entitlements and Problem-solving (LEaP) Project at the School of Law, The University of Leeds published a research report entitled 'Institutionalising Parent Carer Blame'.[2] The report (referred to below as 'the 2021 report') documented and analysed the experiences of families with disabled children in their interactions with English local authority children's services departments.

1.02 The research underpinning the 2021 report found that most children's services departments' procedures did not distinguish between families seeking an assessment of the support needs of a disabled child and those where the assessment concerned suspected abuse / neglect of a child. In consequence disabled children and their families were routinely subjected to highly intrusive and humiliating practices: bedroom inspections, safeguarding focused interviews and unannounced visits.

1.03 The 2021 report noted that many families had severe misgivings about assessors' 'lack of understanding about their child's impairments; the challenges that resulted from these impairments; and the forms of support that were most effective in making these challenges manageable' (para 5.20). It recommended that new guidance be issued that required that assessments be undertaken by 'assessors who, through training and experience, have the necessary knowledge and skills of the particular condition (such as autism, learning disabilities, sensory impairments mental health needs or other conditions)'.

1.04 A primary aim of the LEaP Project is to develop innovative 'system wide' ways of resolving such problems at 'root' – so that they cease to be encountered by individual families. In order to better understand the causes of these problems we considered it necessary to clarify the extent to which English children's services departments sought to: (1) inform disabled children and their families of their assessment and support rights under domestic legislation; and (2) educate their staff on their obligations to disabled children and their families (particularly under the Human Rights Act 1998).

[2] Ibid.

2. The legal and policy context

2.01 When making decisions concerning the rights of disabled children and their families, children's services authorities must (among other things) comply with their legal obligations and take into account all relevant considerations.[3] When making a decision that may interfere with families' qualified rights[4] under the Human Rights Act 1998, authorities must ensure that the decision making process satisfies the requirements of (among other things) the principle of 'proportionality'.[5]

2.02 The UN Convention on the Rights of Persons with Disabilities (UNCRPD) not only establishes that State Parties have the general obligation to promote 'the training of professionals and staff working with persons with disabilities in the rights recognised in the … Convention'[6] but it also requires that states adopt 'effective and appropriate measures' including the promotion of 'awareness-training programmes regarding persons with disabilities and the rights of persons with disabilities' (Article 8).

2.03 It follows that children's services staff – such as assessors – should have a sound understanding of the law that regulates their decisions[7] and understand what constitutes a permissible and an impermissible interference with the fundamental rights of disabled children and their families.

2.04 It would, in consequence, appear to follow that it is the responsibility of children's services authorities to ensure that their officers are aware of the disability specific rights of disabled children and their families and of their obligations under the Human Rights Act 1998.

2.05 The evidence that emerged from the 2021 report[8] suggested that children's services officers were:

(1) responsible for widespread and indiscriminate intrusions into the private and family lives of disabled children and their families; and
(2) applying (unjustifiably) discriminatory practices that treated children whose needs for support arose from their impairment in the same way as children whose needs resulted from abuse / neglect.

2.06 One possible explanation for these findings was that children's services officers were not fully informed as to their distinct responsibilities to disabled children

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[3] *Associated Provincial Picture Houses v Wednesbury Corporation* [1948] 1 KB 223.
[4] For example their Article 8 right to respect for a person's private and family life and their home – and their Article 14 right to non-discriminatory treatment.
[5] *R (Daly) v Secretary of State for the Home Department* [2001] UKHL 26.
[6] Article 4 – General Obligations (1) (*i*). The UNCRPD recognises that training of staff and professionals working with disabled people needs to be implemented to ensure the realisation of (amongst others) the following rights: Accessibility (Article 9); Access to Justice (Article 13); Education (Article 24) and Health (Article 25).
[7] *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374 at 410, HL.
[8] L. Clements & A. L. Aiello *Institutionalising parent carer blame. The experiences of families with disabled children in their interactions with English local authority children's services departments* (Cerebra 2021).

and / or their responsibilities to respect the rights of families protected by the 1998 Act.

2.07 Given the importance that domestic courts attach to local authority practitioners having a sound understanding of the law that regulates their decisions (and a sufficiency of understanding to make the professional judgments that they are called upon to make), it is surprising that there is a dearth of guidance on this question[9] – especially when contrasted with the attention given to this issue in the case of disabled adults.[10]

2.08 'Working Together to Safeguard Children' (2018) is the key policy guidance concerning the assessment of 'children in need' (which includes all 'disabled children'[11]) in England. Chapter 3 of which requires that safeguarding partners must publish annual reports including the evidence of training:

> Reporting
>
> 41. In order to bring transparency for children, families and all practitioners about the activity undertaken, the safeguarding partners must publish a report at least once in every 12-month period. The report must set out what they have done as a result of the arrangements, including on child safeguarding practice reviews, and how effective these arrangements have been in practice.
>
> 42. In addition, the report should also include: … evidence of the impact of the work of the safeguarding partners and relevant agencies, including training, on outcomes for children and families from early help to looked-after children and care leavers (…).

[9] Department of Health, *Care and support for deafblind children and adults: policy guidance*, December 2014 para 30 requires that assessments of Deafblind children must be undertaken 'by a specifically trained person/team equipped to assess [their] needs … '.

[10] See for example The Care Act 2014, sections 12(b), (c) and (d); The Care and Support (Assessment) Regulations 2014 section 5; and the Statutory Guidance to the Care Act 2014 paras 6.85 – 6.90. In 2019 the Government announced its intention to make it mandatory for relevant health and social care staff to have awareness training concerning disabled children with a learning disability and/or autism – see Department of Health & Social Care, 'Right to be Heard': The Government's response to the consultation on learning disability and autism training for health and social care staff, 5 November 2019.

[11] Children Act 1989 section 17(10).

3. Research project methodology

3.01 The research team at the University of Leeds was led by Professor Luke Clements and Dr Ana Laura Aiello with the assistance of 48 student volunteers. Its aim was to assess the nature, extent and suitability of the training given to relevant children's services assessors concerning:

(1) their authority's responsibilities to disabled children under the relevant social care legislation; and

(2) their authority's responsibilities under the Human Rights Act 1998.

3.02 For the purposes of the research:

'relevant children's services assessors' were defined as local authority staff members (including agency staff) who were responsible for undertaking the assessments of disabled children and their families for disability specific support services under the relevant social care legislation; and

'relevant social care legislation' was defined as including the provisions in the Children Act 1989 and the Chronically Sick and Disabled Persons Act 1970 that empowered children's services authorities to provide care and support services to disabled children and / or their families (as detailed in chapter 2 of the 2021 report[12]).

3.03 The research involved the analysis of data obtained by the making of Freedom of Information (FoI) requests and from searching local authority websites.

3.04 The process of obtaining data for this aspect of the research had three distinct dimensions – as detailed below.

1. FoI requests concerning disability training and guidance for children's services assessors

3.05 FoI requests were sent to 16 English children's services authorities seeking information concerning the training and written guidance given to their staff members who were responsible for undertaking the assessments of disabled children and their families for disability specific support services under the Children Act 1989 and the Chronically Sick and Disabled Persons Act 1970. The authorities comprised a geographically diverse range of unitary authorities, county councils and London boroughs.

3.06 The FoI requests were sent in July 2021 (via the local authority portals and / or emails available for such requests) and the responses analysed between September 2021 and February 2022. Appendix 1 of this document includes the sample text of this FoI.

[12] L. Clements & A. L. Aiello *Institutionalising parent carer blame. The experiences of families with disabled children in their interactions with English local authority children's services departments* (Cerebra 2021).

3.07 In the presentation of findings that follows (chapter 4) authorities have been anonymised as LA-A1 to LA-A16.

2. FoI requests concerning human rights training for children's services assessors

3.08 FoI requests were sent to 48 English children's services authorities seeking information concerning the training they provided for staff members who were responsible for undertaking the assessments of disabled children and their families that specifically addressed the authority's obligations under the Human Rights Act 1998. Appendix 2 of this document includes the sample text of this FoI.

3.09 The authorities to whom these FoIs were sent were selected from a list designed to provide a geographical mix that included unitary authorities, County Councils, Metropolitan and London boroughs. Subject to this criterion, they were chosen at random (save only that the 16 authorities which were sent FoI requests on disability training were not included in this sample). The FoI requests were sent in October / November 2021 and analysed between January and March 2022.

3.10 In the presentation of findings that follows (chapter 4) authorities have been anonymised as LA-B1 to LA-B48.

3. Desk top analysis of local authority safeguarding training for children's services assessors

3.11 As noted above (see para 2.08) children's services authorities are required to publish annual reports concerning the action they have taken to discharge their responsibilities under the 'Working Together to Safeguard Children' (2018) guidance, including the training they have commissioned / provided.[13] Between January and March 2022 the most recent annual reports of 64 children's services authorities (i.e. annual reports for 2020-21) were analysed. The sample of 64 local authorities comprised all the authorities who had been sent FoI requests on disability training (16) and all those sent FoIs concerning human rights training (48).

3.12 Authorities have been anonymised as LA-C1 to LA-C64.

[13] Which encompasses 'disabled children' see Children Act 1989 section 17(10).

4. Research findings

Freedom of Information (FoI) requests concerning disability training

4.01 All 16 local authorities who received the disability training and guidance FoI request responded.

4.02 Question one of the request asked the authorities to provide (for each of its last three financial years) information regarding training courses for assessors of disabled children that were specifically directed at ensuring that the assessors had adequate understanding of the care and support needs of disabled children, namely:

(a) the name of each course;
(b) the duration of each course;
(c) the number of the authority's assessors who attended each course; and
(d) a copy of the training programme for each of these courses.

4.03 None of the responses revealed evidence of training courses attended by assessors that would have enabled them to have a better understanding of their legal responsibilities under the Children Act 1989 and the Chronically Sick and Disabled Persons Act 1970.

4.04 Nine authorities disclosed information concerning disability related courses. Some examples include:

- one (LA-A4) disclosed two courses. The aim of the first was to enable assessors to understand the authority's 'eligibility criteria for Children with Disabilities'. The aims of the second (detailed in the box below) included 'To develop knowledge about the ways in which disabled children and young people can be at risk of significant harm'. Over the three-year period specified in the FoI request, seven of the authority's staff had attended the first course and one the second course.[14] Although the information provided concerning the second course is brief, it was the only course identified in the FoI responses to question one, that includes material that appeared capable of providing a very limited level of understanding of the disability related challenges encountered by disabled children and their families.

> **LA-A4**
> *Learning outcomes*
> *To understand the eligibility criteria for Children with Disabilities Services To better understand the complexities and subtleties of Safeguarding Children with Special Needs. To explore how to communicate differently and how to tailor communication to the specific needs of the child. To explore how to avoid parent focused interventions and consistently hear the voice of the child. To be aware of the referral pathways and services available within [the authority].*
>
> *Learning Outcomes*

[14] In response to question 3 of the FoI request the authority stated that it had 7 FTE staff working in its Disabled Children's Team – see paras 4.09 – 4.11 below.

To develop knowledge about the ways in which disabled children and young people can be at risk of significant harm; To gain an insight into the ways in which parents and carers of disabled children can be supported by examining stressors which can impact on parenting; To explore the thresholds and levels of expected care; To increase confidence in working with disabled children and their families (tools).

- one (LA-A5) disclosed two courses, namely 'Working with Children with Learning Difficulties and Disabilities eLearning' and 'Let's talk about being disabled'. No further information was provided concerning these courses. Over the three-year period specified in the FoI request, the attendance recorded by this authority for each of these two courses was of 1 staff member on each.[15]
- one (LA-A9) responded stating that it offered autism, equality / diversity and learning disability awareness training courses. From the information provided, these courses appeared designed to raise awareness about the prevalence and nature of these conditions as opposed to being directed to meet assessors' understanding of the care and support needs of disabled children.

4.05 The responses of the seven authorities that failed to disclose information concerning disability related courses, can be summarised as follows:

- Two refused, arguing that it would take more than 18 hours to comply with the request;[16]
- One reported courses which were not disability related;
- One provided a general response that mentioned training on 'SEND' and 'Continuing Healthcare' but failed to provide any specific information concerning disability related courses;
- One authority stated that 'all relevant staff are professionally competent in performing any such assessments of disabled children' without providing specific information concerning disability related courses;
- One authority stated it did not 'have this Information re the Courses as each staff Member has an Individual Training Programme';
- One authority stated 'All staff are qualified social workers who undertake regular professional development. It is not possible to itemise all courses attended.'

4.06 Question two asked that the authority provide a copy (in printed or electronic form) of the written guidance that it gives to its assessors that undertake assessments of the care and support needs of disabled children.

[15] In response to question 3 of the FoI request the authority stated that it had 39.4 FTE staff working in its Disabled Children's Team – see paras 4.09 – 4.11 below.
[16] Freedom of Information Act 2000 section 12 and The Freedom of Information and Data Protection (Appropriate Limits and Fees) Regulations 2004, regulation 3.

4.07 15 of the 16 authorities responded to this question by either recognising that they do not provide any particular written guidance as requested or providing links and / or referring to guidance. However, on analysis none of these documents provided guidance of the kind identified as required by the 2021 report. The documents were either general assessment guidance (i.e. for the assessment of all children in need) which did not contain material of any specificity relating to the needs of disabled children (for example safeguarding guidance, procedures online, local assessment protocols etc) or were documents specific to Education, Health and Care Plans (EHCPs).

4.08 The one authority (LA-A2) that responded by providing a copy of what appeared to be a more relevant document, sent what was, on analysis, guidance for social workers performing a 'single assessment'. This did not address the authority's specific care and support responsibilities towards disabled children under the 1970 and the 1989 Acts, but instead focused on its safeguarding responsibilities, stating among other things:

- If the child has a disability then reference should be made to Safeguarding Disabled Children Guidance (2009).[17]
- Please therefore consider risk of harm and safety inside and outside the family home.
- Parents and individuals with Parental Responsibility for the child must be asked to give consent for all the work you undertake … unless this would put the child at risk of significant harm and / or jeopardise child protection enquiries.
- Risks for the child must be shared in a timely way with the parents/carers.
- During the assessment process you must see the child's bedroom at least once. Where there are concerns related to neglect then the bedroom should be seen without prior arrangement.
- All children need to be seen at least once and on their own as part of the assessment process.

4.09 Question three requested information as to whether the authority had a social work team with specific responsibility for assessing the needs of disabled children, and if so – that the following information be provided:

(a) the name of this team; and
(b) the number of full-time equivalent social workers who currently worked in this team.

4.10 All 16 authorities confirmed that they had a social work team with specific responsibility for assessing the needs of disabled children. These were variously named, i.e. Disabled Children's Social Work Team; Disabled Children's and Young Peoples Team; Children with Disabilities Team and Disabled Children's Service.

4.11 14 of the 16 authorities provided information concerning the numbers of FTE social workers employed in these teams. The chart below provides details of the responses – the right-hand column expresses – as a ratio – the number of

[17] M Murray and C Osborne 'Safeguarding Disabled Children Guidance' (Department of Children, Schools and Families, 2009).

FTE staff in each authority's disabled children's team compared to the total estimated population of disabled children within that authority.

LA	DCT social workers (FTE)	Estimated no of DC within the LA[18]	No of DC per DCT social workers (FTE)
LA-A1	12	7,920	660
LA-A2	23	13,782	599
LA-A3	8	10,830	1,354
LA-A4	7	3,145	449
LA-A5	39.5	23,616	598
LA-A6	20.4	20,379	999
LA-A7	33	24,361	782
LA-A8	37	27,014	730
LA-A9	6	2,227	371
LA-A10	19	12,770	672
LA-A12	18.7	12,330	659
LA-A13	6	2,750	458
LA-A14	24.20	14,803	612
LA-A15	21.6	12,925	598

Table 1

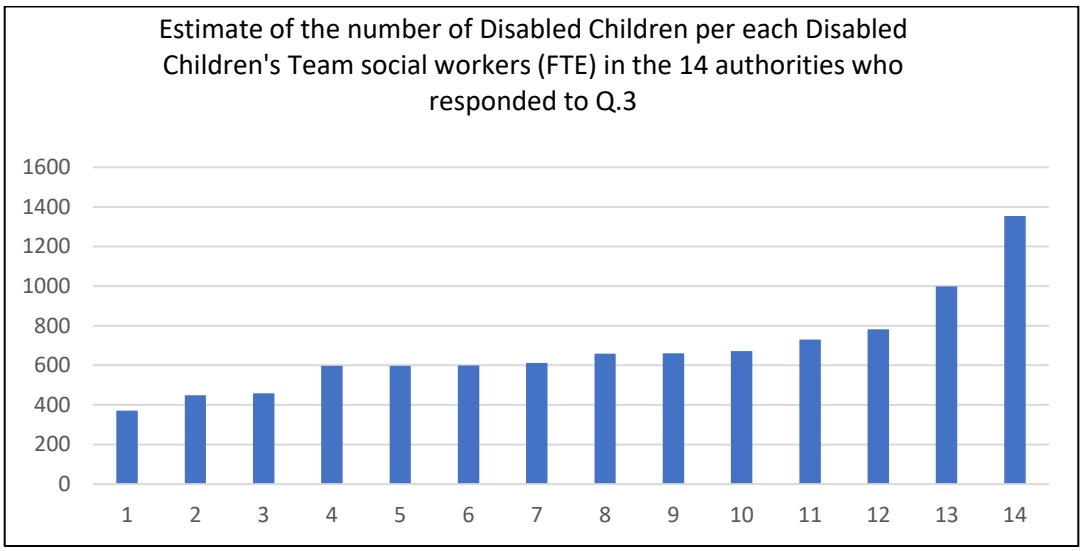

Table 2

FoI requests concerning human rights training

4.12 FoI requests were sent to 48 English children's services authorities seeking information concerning the training they provided for staff members who were responsible for undertaking the assessments of disabled children and their

[18] Based on the assumption that disabled children comprise 1.7 per cent of the local authority population. The assumption derives from the estimate that (using a disability definition equivalent to that in the Equality Act 2010) there were about 1.1 million disabled children aged 0–17 in the UK in 2017/18 [Department for Work and Pensions (2019) *Family Resources Survey, 2017/18*] out of a total UK population of 66 million [Office for National Statistics *Estimates of the population for the UK, England and Wales, Scotland and Northern Ireland: mid 2017*].

families: training that specifically addressed the authority's obligations under the Human Rights Act 1998.[19]

4.13 Of these 48 authorities 35 (73 per cent) responded either providing all or part of the required information or confirming that they did not hold this information.[20]

4.14 Of the 35 authorities only one provided information that described a Human Rights Act 1998 training course that was of specific relevance for staff members who were responsible for undertaking the assessments of disabled children and their families. The response of this authority stated:

> **LA-B41**
>
> *An introduction to the Human Rights Act which is in-house eLearning… The eLearning course programme is entitled 'Welcome to an Introduction to the Human Rights Act'. This gives officers a basic understanding of the Human Rights Act 1998, its origins and how it applies to them and those they deal with on a day to day basis. The course consists of the following sections:*
> *• Human Rights: Learn What Human Rights are and what they mean in the context of the Human Rights Act*
> *• Brexit and the future of the Human Rights Act: Get to grips with the current affairs relating to the Human Rights Act*
> *• Our freedoms and rights: Understand the freedoms and rights that belong to you, your colleagues and everyone in the UK*
> *• What human rights mean for you: Find out how human rights might impact your work*
> *• Can human rights be overruled?: Learn about the flexibility of the Human Rights Act*
> *• Your turn: A chance to practice your human rights knowledge.*
> *• Further reading: Links to additional resources.*
> *(…)*

The authority confirmed that in the three-year period of the FoI request ten of its relevant staff[21] had completed the eLearning course.

4.15 Eight (23 per cent) authorities confirmed that they did not offer training to 'needs assessors' concerning their authority's obligations under the Human Rights Act 1998 and / or that they did not hold the relevant information as to whether such training had taken place.

4.16 26 authorities (74 per cent) responded with statements concerning the range of training courses that they provided, although on analysis none of these courses focused on the Human Rights Act 1998 obligations of needs assessors

[19] Appendix 2 of this document includes the sample text of this FoI.
[20] Of the remaining 13 authorities, eight failed (without explanation) to provide the information and five refused to provide the information arguing that it would take more than 18 hours to comply with the request – see footnote 16 above;
[21] Being staff described in the FoI request – namely 'staff members (including agency staff) who were involved in the assessment of 'children in need' support services under section 17 Children Act 1989'. The authority being a relatively small authority, with a total population less that 200,000.

responsible for undertaking assessments of disabled children and their families. The following examples are illustrative of these responses.

LA-B7

Response:
Qualified social workers completed statutory assessments. Social Work England ensures that all formal social work training "is designed in accordance with equality, diversity and inclusion principles, and human rights and legislative frameworks." Furthermore, to be a registered social worker, social worker professional standards include to "Respect and promote the human rights, views, wishes and feelings of the people I work with, balancing rights and risks and enabling access to advice, advocacy, support and services".

Promotion of the [LA-B7] *Children's Services Procedures Manual is included in the induction of all staff. It sets out the framework within which Children's Services work with children, young people and their families. It is underpinned by a range of legislation including, but not limited, to the Human Rights Act 1998.*

A variety of training relating to assessment have been offered to Social Workers, the focus of this training often concerns the interpretation of information - risk assessment, and the use of analysis.

Question 1 and 3:
In 2018-2019 the following courses were provided:

- *Analytical & Assessment Practice Skills (2 Days)*
- *Assessing Attachment & Emotional Resilience of Potential Carers (attended by 1 member of staff from the Disabled Children Service)*

In 2019-2020 the following courses were provided:

- *Analysis for Care Records & Assessment Workshop (attended by 1 member of staff from the Disabled Children Service)*
- *Creative Techniques & Activities for Building Trust & Assessing Safety (attended by 1 member of staff from the Disabled Children Service)*
- *FGM CPD Risk Assessment (attended by 1 member of staff from the Disabled Children Service)*

In 2020/21 the following courses were provided:

- [LA-B7] *Advanced MCA Assessing capacity and best interests*
- *Domestic Abuse - Interviewing for assessment and risk assessment*
- *Introduction to Risk Assessment*
- *Pathway Plans*
- *Pre- Birth Assessments*
- *Recording well*
- *Writing & Recording Well – Making your Analysis zing*

Due to a system change in 2021, we are not able to filter to team level to respond to the number of social workers from the Disabled Children's Team.

Question 2: Copies of the course programme or course programmes:

[LA-B7] *are not the owners of the content where it is delivered by a third party or if they are independent of the council.*

LA-B39

The details requested for courses described above are:

1. *The name of the course or courses;*
   Response: *All staff within social care are offered a variety of training relating to our practice models, key training in relation to this FOI are the children with disabilities team:*
   - *All social workers assessing children under s17 hold a social work qualification*
   - *Safeguarding and Neglect training through the Safeguarding Partnership – in-house.*
   - *Advanced training Safeguarding Disabled Children – externally funded.*
   - *Trauma Informed Practice – externally funded.*
   - *Learning disability and autism trauma training – externally funded.*
   - *Communication training including Makaton – externally funded.*
   - *There also throughout the year are webinars and workshops that may be appropriate for social workers from the Children with Disabilities team to attend and these will be emailed out as and when they are received.*
   - *Staff also have access to Community Care Inform whereby there are research articles and a supported learning platform for all staff to use, they are on the website for children with disabilities.*
2. *Copies of the course programme or course programmes; and*
   Response: *We don't hold this information centrally and expect that courses/programmes are updated for each delivery.*

The number of staff who have attended the course, or if there was more than one course, the number of staff who have attended each of the courses.
Response: *All staff and managers within the children with disabilities team have access to a range of training. Current staff numbers who have completed training within the team is 16.*

LA-B42

Human Rights Assessment Training Trainer:
…
Migrant children and young people in care can face a number of challenges and barriers. These issues can stem from a lack of knowledge and awareness as to what their rights actually are, complex immigration systems, immigration statuses and the services and support they are entitled to. These problems can lead to young care leavers becoming appeal rights exhausted/undocumented.
Aims and objectives
This course is for any local authority professional working with migrant children and young people in the care system. Participants will receive a comprehensive overview of relevant law, policy and processes affecting migrant children and young people in the care system. The course aims to help professionals working with migrant children and young people to feel confident in understanding their duties, as

well as the child's rights and entitlements in the context of immigration. There will be a particular focus on leaving care support and human rights assessments.
Immigration status
- *Unaccompanied asylum seeking children and young people*
- *Separated children in care with immigration issues*
- *Nationality and registration as British citizens*
- *EU children in care and care leavers*

Care & support
- *Duties towards looked after children*
- *Care plans and pathway plans*
- *Leaving care support*

Human rights assessments
- *HRA – law*
- *HRA - practice*
- *Legal options for end of the line cases*

Local authorities' safeguarding training for assessors

4.17 As noted above (para 2.08) the statutory guidance 'Working Together to Safeguard Children' (2018)[22] requires that safeguarding partners publish annual reports that include evidence of the training that they have commissioned / provided. Despite this obligation, the research team was unable to locate the most recent (2020-2021) safeguarding children's partnerships' annual reports for 29 of the 64 authorities (45 per cent of the research sample). Web searches of these 29 authorities did however reveal relevant data concerning the staff training that they had commissioned.

4.18 An analysis of the data set (i.e. the information detailed in the authorities' most recent 'Working Together' reports as well as that obtained from the web searches) reveals that 18 of the 64 authorities (28 per cent of this sample) offered specific safeguarding training for assessors working with disabled children and young people.

LA-C17

Safeguarding Children with Disabilities
Aims & Objectives: By the end of this one day course the participants will have:
Considered the vulnerability, risk and protective factors for disabled children and young people
Considered the legal framework and relevant practice guidance for safeguarding disabled children
Considered various models of disability, including the Social Model
Considered how to identify and assess safeguarding concerns for disabled children and young people
Considered ways to obtain the views of disabled children and young people.

LA-C18

[22] Which encompasses 'disabled children' see Children Act 1989 section 17(10).

Safeguarding Disabled Children and Young People
This session will describe why disabled children and young people are vulnerable to abuse, explore how to respond where abuse is suspected and offer guidance on how to build the resilience of disabled children and young people and their families.

LA-C39

Safeguarding Disabled Children
….
The protection of disabled children presents a great challenge for professional carers and families to work effectively together to provide appropriate safety from abuse. The course provides an overview of abuse and the opportunity to review good practice.

Learning Outcomes ¯ Improve awareness of the vulnerability of disabled children to abuse. ¯ Examine appropriate methods of investigation where abuse is a concern. ¯ Consider those procedures which enhance safety of children with disabilities. ¯ Explore the needs of children who have been abused, including communication issues.]

LA-C50

About this course
This training course is for those who work with disabled children, young people and their families and need to understand how to safeguard disabled children.
The aim of this course is to raise awareness of the complex issues and dilemmas in safeguarding disabled children and increase participant's ability to respond, both in the community and care settings.
Learning Outcomes
By the end of the session participants will be able to:

- *Understand why disabled children are more vulnerable to harm*
- *Acquire an understanding of our own attitudes to disability and how those impinge on our safeguarding practice*
- *Identify the potential risk factors for disabled children in the context of their environment and family setting*
- *Identify the additional barriers and thresholds, when safeguarding disabled children*
- *Consider communication barriers and strategies to overcome these*

To safeguard the dignity, rights and wellbeing of children and young people.

LA-C58

Safeguarding Matters: Disabled Children [Disability organisation]
This session will describe why disabled children and young people are vulnerable to abuse, explore how to respond where abuse is suspected and offer guidance on how to build the resilience of disabled children and young people and their families.

The word order 'disabled children and young people' is used in this and all the [Disability organisation] sessions. This is because disabling factors are most often external to the person and are therefore something that everyone in society can do something about. []

5. Discussion and analysis

5.01 This report builds on the findings of 2021 research[23] that social care policies in England create a default position for those assessing disabled children, that assumes parental failings.

5.02 The 2021 report referred to the testimonies of many parents of disabled children concerning their negative experiences of their authority's children's services assessment and care planning process. As it noted, (para 1.04):

> Not untypically, these concern parents who have approached their local authority for help in order to address the additional barriers they encounter as a result of their child's impairment – only to find that (from the outset) they are treated in a manner that suggests to them that they are considered to be neglectful and/or abusive parents. Interactions that convey the strong impression that the default position for children's services departments in such cases is to locate the problems families face in parental failings and not in the lack of support that they require in order to overcome the many barriers that confront them as a consequence of their child's impairment. This approach is referred to as a 'parent carer blame' policy in this report.

5.03 The research underpinning the 2021 report was unable to identify:

- any local authority guidance for their assessors that explained that a different approach should be taken when assessing the needs of a disabled child where the referral was not accompanied by cogent evidence of neglect or abuse; or
- any local authority guidance for their assessors concerning the need for cogent evidence to exist before seeking to see a child's bedroom or seeking to interview a child in the absence of their parent.

5.04 The 2021 report additionally referred to the perception of many English parent carer-led support groups that:

- the assessment staff employed by their children's services department lacked training, experience and understanding concerning the disability related challenges that disabled children and their families encountered; and that
- local authorities were routinely denying disabled children and their families the right to have their eligibility for disability related statutory support services assessed.

5.05 Given the negative perceptions of many parent carer-led support groups and the failure of the 2021 research to identify local guidance that detailed a distinct assessment process for disabled children (not suspected of being neglected or abused), it was decided that both these issues required further research. In consequence, the research that underpins this report seeks to ascertain:

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[23] L. Clements & A. L. Aiello *Institutionalising parent carer blame. The experiences of families with disabled children in their interactions with English local authority children's services departments* (Cerebra 2021).

(1) the extent to which English children's services' authorities are providing adequate training and guidance to their staff who assess the social care needs of disabled children and their families; and

(2) whether local authorities are themselves able to identify local guidance for their assessors that detailed a distinct assessment process for disabled children (not suspected of being neglected or abused).

5.06 These are important questions. If, as the 2021 research findings suggest, public bodies are routinely requiring social workers to enter "'families' most intimate spaces': going 'right into the heart of families' inner space – into their bedrooms, bathrooms and kitchens'" [24] in situations when families feel powerless to object, one would expect that these public bodies would:

(1) publish forceful guidance as to when these severe interferences can / cannot be justified;

(2) ensure that appropriate training was provided to all assessing staff, so as to be satisfied that the guidance was understood and followed; and

(3) develop (and publish) a care and support assessment process for disabled children and their families that is distinct from the process that is employed for children for whom there is cogent evidence that they are being neglected or abused.[25]

5.07 The obvious need for such action has been underscored by many expressions of concern about assessment failures of this find. These include, (for example) the statement by the Chief Social Worker for Children and Families that families of disabled children had long complained about social work assessments being used 'as an opportunity to judge parenting capacity through a child protection lens rather than through a lens of social care need'[26] and the statement by the Independent Review of Children's Social Care "that families with disabled children felt 'that they are navigating a system that is set up for child protection, not support'".[27]

5.08 Given the importance of appropriate guidance, training and policies of the kind detailed above, it is not unreasonable to expect that local authorities would have little difficulty in responding to questions concerning their existence and little difficulty responding to requests for copies of them (or providing hyperlinks to where they can be located).

5.09 It is against the backdrop of the above discussion, that the current research falls to be assessed. What is striking about the majority of responses provided by

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[24] 2021 report para 5.40, citing H Ferguson 'Making home visits: Creativity and the embodied practices of home visiting in social work and child protection' Qualitative Social Work 2018, Vol. 17(1) 65–80.

[25] As explained in the 2021 report, para 5.34 a failure to have a separate process could constitute unlawful discrimination contrary to Articles 8 and 14 of the European Convention on Human Rights – see for example, *Thlimmenos v Greece* (2001) 31 EHRR 15; Application No. 34369/9731 6th April 2000 at para 44 and see *Burnip v. Birmingham City Council* [2012] EWCA Civ 629, para 14.

[26] Chief Social Workers for Adults and the Chief Social Worker for Children and Families *A spectrum of opportunity: an exploratory study of social work practice with autistic young adults and their families* (Department of Health and Social Care 2021).

[27] The independent review of children's social care (The MacAlister review) *The Case for change* (2021) p.29 and see also (at p.30) that 'the system appears to be disproportionately spent on assessing and investigating families instead of providing support' .

local authorities to the FoI requests is the apparent difficulty that they had in furnishing the information requested. On analysis it appears clear that most authorities either did not offer the relevant disability / human rights guidance or that they did not hold the relevant information as to whether such training and / or guidance had or had not been provided.

5.10 Responses of this kind suggest, at best, that the authorities are unaware as to what training they have commissioned and do not provide any guidance for their assessors that details a distinct assessment process for disabled children. Even if authorities did not consider the disability / human rights training (specified in the FoI requests) to be of importance, it is not unreasonable to assume that they would have rational training commissioning strategies (for example strategies that prioritise training considered to be essential for their efficient and lawful functioning). Nor is it unreasonable to assume that they would have in place strategies that ensure details of commissioned training courses are captured (for auditing purposes, if none other). On this basis, the inability of many authorities to provide any significant detail in response to the FoI requests, suggests that disability and human rights training courses for assessors of disabled children were not in fact provided by those authorities who responded by stating that they did not hold the relevant information as to whether such training had or had not been provided.

Disability training and guidance for local authority assessors

5.11 Of the authorities that disclosed details of 'disability related courses' given to their staff members who were responsible for undertaking the assessments of disabled children and their families – the courses they disclosed fell into three general categories

1. Safeguarding courses that focused on the risks disabled children ran of experiencing 'significant harm';
2. Courses that sought to explain the authority's 'eligibility criteria' for support (including support by their Children with Disabilities' Team).[28]
3. Courses that appeared to be of a general disability 'awareness raising' nature – for example 'Working with Children with Learning Difficulties and Disabilities eLearning' and 'Let's talk about being disabled'.

5.12 Valuable as general disability 'awareness raising' courses are, the limited information provided concerning these courses did not give any indication that they contained material of a depth or weight that would provide participants with an understanding of their statutory obligations under the 1970 and 1989 Acts or address the criticisms of parent carers noted in the 2021 report (as to assessors lack of understanding concerning the disability related challenges that disabled children and their families encountered).

5.13 As noted at para 4.04 above, only one authority (LA-A4) disclosed brief details of a training course that appeared to be partially capable of meeting the need for assessors to understand the care and support needs of disabled children – in the

[28] The independent review of children's social care (The MacAlister review) The Case for change (2021) p37 noted that families of disabled children frequently referred to the fact that the thresholds for support (ie eligibility criteria) were very high.

sense that it had the potential to address the practice failings / lack of disability expertise identified by parent carers in the 2021 research report. It did not however appear to contain material of a depth or weight that would provide participants with an understanding of their statutory obligations under the 1970 and 1989 Acts.

5.14 In addition to seeking the requisite information (concerning disability related courses through the use of FoI requests), the research programme (as noted in paras 4.17 – 4.18 above) searched the on-line records of the 64 authorities for details of the training they commissioned / provided as part of their obligations detailed in the 'Working Together to Safeguard Children' (2018) guidance.

5.15 This exercise did not reveal any training courses of a depth or weight that would provide participants with an understanding of their statutory obligations under the 1970 and 1989 Acts or address the criticisms of parent carers noted in the 2021 report (as to assessors' lack of understanding concerning the disability related challenges that disabled children and their families encountered). Indeed the disabled children's training that was identified had an overriding focus on safeguarding rather than on support. On one level this may be considered unsurprising, since the 2018 guidance has an overwhelming focus on child protection (in the sense of protection from neglect and abuse). However, as noted in the 2021 report (paras 2.19-2.22) the 2018 guidance (through its repeal of earlier guidance concerning the assessment and care management of disabled children) is ostensibly the primary national social care guidance covering local authorities' assessment and care planning responsibilities for all 'children in need' including disabled children (for whom there is no cogent evidence of neglect or abuse).

5.16 None of the FoI requests identified any local authority guidance that required a different approach to assessing the needs of a disabled child when there was no cogent evidence of neglect or abuse, and none provided guidance that included mention of their authority's specific responsibilities to disabled children under the 1970 and the 1989 Acts.

5.17 In this respect the findings echo those of the 2021 research, that the majority of local authority assessment protocols failed to provide any disabled children specific guidance and none specified a distinct assessment route for disabled children for whom there was no cogent evidence of neglect or abuse. Findings from both research programmes suggest strongly that local authorities have a one-size-fits-all approach to the assessment of children in need – regardless of whether the need arises from ill-treatment or disability. It is, as the 2021 report suggests, an approach that is arguably unlawful.[29]

5.18 The cumulative evidence suggests that it should, by now, be reasonably clear to the Secretary of State for Education, that local authorities have failed to develop and implement fit-for-purpose local assessment protocols, despite their instructions to this effect in the 2013 'Working Together to Safeguard Children' policy guidance.[30]

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[29] For the reasons considered at paras 5.32 – 5.35 of the 2021 report.

[30] First issued in 2013 and a requirement that remains in its current iteration – namely HM Government *Working Together to Safeguard Children. A guide to inter-agency working to safeguard*

Disabled Children's Teams social worker case load

5.19 14 of the surveyed authorities provided information as to the number of full-time equivalent social workers who worked in their (variously named[31]) Disabled Children's Teams. The figures are difficult to analyse with precision, given the variations in the number of disabled children in each authority (for which there is no precise data) and the possibility that authorities may count staff differently – for example by including / excluding senior managerial staff. It can however be seen from Table 2 (page 12 above) that there is a reasonable consistency to the responses. Based on broad estimates,[32] these indicate that there were (across the 14 authorities) on average 681 disabled children for every disabled children's team social worker. For the purposes of this calculation a 'disabled child' is a child with a physical or mental impairment that has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities (i.e. one that satisfies the Equality Act 2010 section 6). It would appear to follow, from the requirement that the impairment must have a 'long-term adverse effect', that such children will generally have on-going needs for care and support (and review) as opposed to requiring short term, time limited interventions.[33]

5.20 These results raise concerns that warrant further research. For example, the most recent (2021) workforce data[34] indicates that on average Children's Social Workers have a caseload of 16.3 children. On this basis only one disabled child in 40 will (at any one time) be receiving support from a Disabled Children's Team or, put another way, only 2.5 per cent of all disabled children.

5.21 This statistic would go some way to explain why (as discussed in the 2021 report) so many families who have contacted the Cerebra helpline have encountered such difficulty in getting their child assessed by (what they consider to be) a suitably skilled assessor (generally perceived as one located in a Disabled Children's Team) and why it appears that so many disabled children are channelled through the generic 'children in need' assessment route.

Human rights training for local authorities' assessors

5.22 Of the 35 authorities that provided information concerning the Human Rights Act 1998 training that they provided for staff members responsible for undertaking the assessments of disabled children and their families,[35] only one provided

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and promote the welfare of children (HM Government 2018) paras 46 - 50: the version of the on-line guidance as at 1 July 2022 - and see in this respect para 2.20 of the 2021 research report.

[31] See para 4.10 above.

[32] Detailed in footnote 18 above.

[33] See in this respect paras 1.14 and 2.28 L. Clements & A. L. Aiello, *Institutionalising parent carer blame. The experiences of families with disabled children in their interactions with English local authority children's services departments* (Cerebra 2021) and its finding that families with disabled children who do not receive support from assessors who has both the expertise and practice experience of supporting their specific needs are generally assigned to generic 'children in need' assessors whose terms of reference only permit them to provide, at best, short term support: support frequently focused on addressing perceived parental failings.

[34] HM Government *Children's Social Work Workforce Reporting Year 2021* (24 February 2022).

[35] Appendix 2 of this document includes the sample text of this FoI.

information that described a Human Rights Act 1998 training course that was of specific relevance for staff members who were responsible for undertaking the assessments of disabled children and their families. Welcome as it is that such a course was provided, on analysis the content (see para 4.14 above) appeared to be general in nature, and (so far as it was possible to discern from the materials disclosed) provided no focus on the issues of specific concern for this research – for example the process by which Article 8 proportionality decisions are to be reached.

6. Appendixes

Appendix 1: Copy of the Formal Freedom of Information Request on Disability Training

Dear

I request that you provide the following information in compliance with your duties under the Freedom of Information Act 2000.

The purpose of the request

I seek the information detailed below, in order to ascertain the level of training and written guidance received by those working for your authority who are responsible for undertaking the assessments of disabled children and their families for disability specific support services under the Children Act 1989 and the Chronically Sick and Disabled Persons Act 1970.

Statutory cost compliance limit note

If your authority considers that complying with this request in its entirety will exceed the statutory cost of compliance limit (specified in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004) then I ask that you respond to the following requests in the order they appear until that limit is reached.

Requested Information

1. In relation to your staff members who are (or were) involved in the actual process of assessing the care and support needs of disabled children and their parents for the purposes of the Children Act 1989 and the Chronically Sick and Disabled Persons Act 1970 (referred to as 'assessors'), please provide the following information for each of your authority's last three financial years (for which you have published accounts) concerning the training courses that these assessors have attended that were specifically directed at ensuring that they had adequate understanding of the care and support needs of disabled children, namely:
    a. the name of each course;
    b. the duration of each course;
    c. the number of your authority's assessors who attended each course; and
    d. a copy of the training programme for each of these courses.

2. Please provide a copy (in printed or electronic form) of the written guidance that your authority provides to its assessors, for assessing the care and support needs of disabled children.

3. If your authority has a social work team that has specific responsibility for assessing the needs of disabled children please provide the following details, namely:
    a. the name of this team, and
    b. the number of full time equivalent social workers who currently work in this team.

I understand that under the Act I am entitled to a response within 20 working days of your receipt of this request.

If this request is denied in whole or in part, I ask that you justify all refusals by reference to specific exemptions of the Act. I will also expect you to release all non-exempt material. I reserve the right to appeal your decision to withhold any information or to charge excessive fees.

If you require any clarification, please contact my research assistant Dr Ana Laura Aiello at A.L.Aiello@leeds.ac.uk in accordance with your duty under Section 16 to provide advice and assistance if you find any aspect of this Freedom of Information request problematic.

Please acknowledge receipt of this request by email. I look forward to receiving the information in the near future.

Yours faithfully,

Luke Clements

Cerebra Professor of Law and Social Justice

The School of Law, Liberty Building University of Leeds LS2 9JT

Appendix 2: Copy of the Formal Freedom of Information Request on Human Rights Training

Dear [Name of local authority]

I request that you provide the following information in compliance with your duties under the Freedom of Information Act 2000.

The purpose of the request

I seek the information detailed below, in order to ascertain the level of training received by those working for your authority who are responsible for undertaking the assessments of disabled children and their families for disability specific support services under the Children Act 1989 and the Chronically Sick and Disabled Persons Act 1970.

Statutory cost compliance limit note

If your authority considers that complying with this request in its entirety will exceed the statutory cost of compliance limit (specified in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004) then I ask that you respond to the following requests in the order they appear until that limit is reached.

Requested Information

Please provide the details specified in (1) - (3) below concerning training courses provided by your authority (whether 'in-house' or externally funded) that specifically addressed the obligations of your authority under the Human Rights Act 1998. This request is limited to those courses that have been provided since April 2018 for your staff members (including agency staff) who were involved in the assessment of 'children in need' support services under section 17 Children Act 1989.

The details requested for courses described above are:

1. The name of the course or courses;
2. Copies of the course programme or course programmes; and
3. The number of staff who have attended the course, or if there was more than one course, the number of staff who have attended each of the courses.

I understand that under the Act I am entitled to a response within 20 working days of your receipt of this request.

If this request is denied in whole or in part, I ask that you justify all refusals by reference to specific exemptions of the Act. I will also expect you to release all non-exempt material. I reserve the right to appeal your decision to withhold any information or to charge excessive fees.

If you require any clarification, please contact me via email at [Student's University email] in accordance with your duty under section 16 to provide advice and assistance if you find any aspect of this Freedom of Information request problematic.

Please acknowledge receipt of this request by email. I look forward to receiving the information in the near future.

Yours faithfully,

[Student's name]

The School of Law, Liberty Building University of Leeds LS2 9JT