

Disabled Children, & the Law

Luke Clements
www.lukeclements.com

1

- 1 Assessing a disabled child's need for social care support
- 2 The 'eligibility decision': what needs must be met
- 3 Carers' assessments
- 4 What type of supports can be provided
- 5 Common problems
- 6 Transitions.

2

Key Law

Children Act 1989

- Duty to safeguard and promote the welfare of children in need
- Duty to provide a range of support services for all children in need (including disabled children)

Chronically Sick and Disabled Persons Act 1970

- Duty to provide a range of support services for disabled children

3

Services and support

Children Act 1989 s17

Includes home & community based support ;

- Respite and personal care
- Includes accommodation and cash (s17(6))
- Includes direct payments (s17A)
- Can be provided for family members (s17(3))

Chronically Sick & Disabled Persons Act 1970

- Includes home & community based support.

4

Children Act 1989 Sch 2 Part 1

Support includes (para 8):

- advice, guidance and counselling;
- occupational, social, cultural or recreational activities;
- home help (which may include laundry facilities);
- facilities for, or assistance with, travelling to and from home for the purpose of taking advantage of any other service provided under this Act or of any similar service;
- assistance to enable the child concerned and his family to have a holiday.

5

Definition ~ 'disabled child'

Section 17 (11) Children Act 1989

- a child is disabled if he 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

Section 1(2) Mental Health Act 1983

- "mental disorder" means any disorder or disability of the mind;
- [ie includes not only a mental illness or learning disability but also – other disorders such as high functioning autism; ADHAD etc]

6

Key skills of assessors

- Assessors should have the relevant knowledge & skills
Working Together 2018 para 49
- 'impairment specific knowledge – eg autism awareness-
Autism spectrum disorder in under 19s: recognition, referral and diagnosis NICE Clinical guideline [CG128]
- For adults (by analogy) assessors must have 'suitable skills, knowledge and competence' and training
Care & Support (Assessment Regulations) 2014

7

Assessing social care needs

- A general duty to assess the needs of children 'in need' under the CA 1989
R (G) v. Barnet LBC (2003)
- When preparing an EHC Plan there is a duty to assess social care support needs
CA 1989 and the CSDPA 1970
- *Working Together (2018)* 'policy guidance';

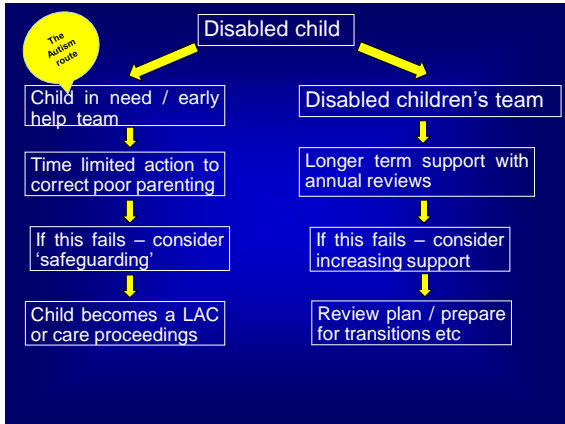
8

Assessing disabled children

Problem

- LAs discriminating against some disabled children – eg:
- children with autism will only be assessed if they also have:
 - A diagnosis and/or challenging behaviour which results in significant risk of harm to others
 - Policies violate Equality Act 2010 and the European Convention on Human Rights.

9



10

Assessing need

“What if”

- What will happen if care and support is not available?
- The greater the risk to the person’s well-being the greater the onus is on the LA to meet that need – or to give cogent reasons as to why this is not necessary.
- Well-being includes physical, mental, social and emotional well-being as well as the ability to engage in employment, education, training, leisure and social activities.

11

Assessing need

Ombudsman considers that assessments must:

- carefully & accurately set out the YP’s needs;
- be sufficiently detailed so a proper decision to be made as to what services (if any) are required;
- if services required - these must be specified, ie what actions to be undertaken, by whom & for what purpose. If support required, then it must be explained why the assessed hours will meet the YP’s needs;
- if services not required then reasons must be given why the YP is not eligible for support.

Complaint 17 012 586 against Wirral MBC (2018) paras 23-24

12

Working Together (2018)

- The purpose of an assessment is (para 38):
- to gather important information about a child and family
 - to analyse their needs ... [and] to decide whether the child is a child in need
 - to provide support to address those needs to improve the child's outcomes and welfare

13

Working Together (2018)

- Assessments must 'focused on action and outcomes for children' and be 'holistic in approach, addressing the child's needs' (para 51)
- A decision on the type of response to be made within 1 working day (para 71) and if any services are required by the child and family must determine this and what type of services within 45 working days (para 75)

14

R (AC & SH) v. Lambeth LBC [2017]

- The LA must demonstrate that its assessment has been undertaken with the necessary rigour and width to be comply with the obligations in Working Together
- This does not mean that a LA is obliged to provide support – but it is required 'to make a rational decision as to what, if any, support is necessary and appropriate to meet the child's needs'.

15

Lambeth LBC Ombudsman (2018)

I consider it is incorrect to state that budget constraints are a legitimate reason for not meeting the identified support needs of a child. Each person within the Council's area must be assessed on an individual basis, and their needs met accordingly. Budget constraints must not dictate the level of support offered.

Complaint No 16 011 13 June 2018 para 37.

16

Eligibility decision

Eligibility criteria for children's services must be published in the councils 'local offer'

The Special Educational Needs & Disability Regs
2014 reg 53 & Sch 2 para 18.

"What if" ~ focus on the facts

17

Care & Support Planning *how, who, what and when*

What the assessed need are

How the need is to be met

- the level & frequency of the help that is to be provided;
- who is going to provide it;
- which agency is responsible for what service;
- what the objectives of are providing help (outcomes);
- when is the care being provided (times / days / dates);
- what the carers are willing to do;
- who is the coordinator and their contact number;
- who to contact in emergencies;
- what the contingency plan is if things go wrong;
- who is monitoring the plan;
- When the review is to happen.

18

Looked after children

19

Children Act 1989

Accommodation under the CA 1989

Section 17
~ general respite care

Section 20
~ accommodated children



Children
Leaving Care
entitlements

20

Looked after children

A child is 'looked after' if (s22 CA 1989)

- in care; or
- accommodated under s20 CA 1989; or
- in respite care under s17 and any single respite care period lasts for more than 17 days or the total in one year exceeds 75 days

21

Carers assessments

22

Key Law

Duty to assess the needs of parent carers

Section 17ZD Children Act 1989

Duty to assess the needs of other adults who care for a disabled child

Section 1 Carers (Recognition and Services) Act 1995

Duty to assess the needs of young carers

Section 17ZA Children Act 1989

23

Parent carers

Children Act 1989 s17ZD

Duty to assess a parent carer 'on the appearance of need'

- The assessment must have regard to the well-being of the parent carer;
- "well-being" has same meaning as in Care Act 2014.

24

Well-being

relates to:

- (a) personal dignity
- (b) physical /MH /emotional;
- (c) protect abuse /neglect;
- (d) control day-to-day life;
- (e) work, education, training;
- (f) social & economic;
- (g) personal relationships;
- (h) suitable accommodation;
- (i) contribution to society.

regard to—

- (a) individual is best placed;
- (b) views, wishes and feelings;
- (c) all the circumstances;
- (d) participate in decisions
- (e) a balance between individual's and carers;
- (f) Protect abuse/ neglect;
- (g) minimum restrictions.

25

A 2016 ombudsman's report

- Single mother with two children: one with significant disabilities & in need constant supervision.
- Council advised her that it expected parents to organise their work responsibilities around the needs of their children: that it was not its responsibility of to provide direct payments solely to enable parents to work
- But she could use the respite breaks she received to enable her to work

26

A 2016 ombudsman's report

Maladministration

- Council has failed to understand the law.
- The child's assessment and carer's assessment should 'feed into each other'.
- Council knew son needed constant supervision.
- Council also knew mother in full time work and the nature of her job meant she could not pursue flexible working.
- These were key factors but neither the son's assessment nor the carer's assessment properly considered those issues

27

A 2016 ombudsman's report

- Government guidance clearly states authorities should not assume a carer is happy to continue in their caring role.
- Councils are required to consider whether a carer wishes to work.
- Nothing in the assessments to suggest the Council properly considered the impact on ... if she did not receive support during school holidays.
-

Kent County Council No. 14 015 230 7 June 2016.

28

Young carers

Children Act 1989 s17ZA

Duty to assess a young carer 'on the appearance of need'

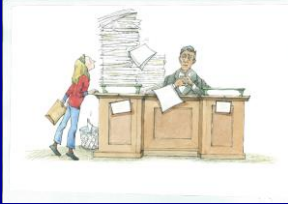
- Detailed assessment regulations;
- Young Carers' (Needs Assessments) (England) Regulations 2015

29

Commonly occurring problems

30

Delay



31

Delay

Department for Education Guidance 'Working Together' (2018) p31, para 75

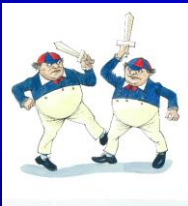
- Assessments must be completed within a maximum of 45 working days (ie 9 weeks)

Challenging delay

- Accessing Public Services Toolkit' (Cerebra 2017)
- Advice and precedent letters

32

Inter-agency disputes



33

Inter-agency disputes

Accessing Public Services Toolkit' (Cerebra 2017)
Advice & precedent letters



34

Funding Panels



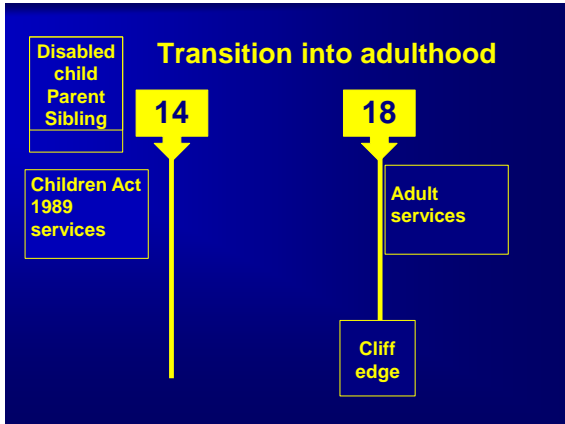
35

Funding Panels

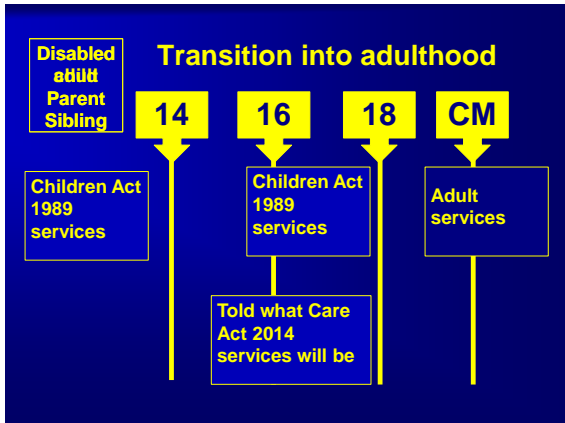
Accessing Public Services Toolkit' (Cerebra 2017)
Advice & precedent letters



36



37



38

Transitions ~ Care Act 2014 ss 58 - 59

General formula

Where it appears to a LA that:

1. it is 'likely' that [person] will have care & support needs after transition
2. it to be of significant benefit to be assessed;

Must assess (with consent / BI assessment)

LA must give reasons if it refuses to assess

39

Case study CA 2014 Statutory Guidance

Isabelle's story (para 16.15)

- 15 years old with complex needs. Attends residential school 38-week basis funded by education & social services. Care currently required on the weekends and in holidays.
- Isabelle's parents ask LA for a transition assessment on her 16th birthday.

40

Case study CA 2014 Statutory Guidance

Isabelle's story (para 16.15)

- Initially LA say this is too soon to be of significant benefit. Since the support from school can continue until she is 19, they feel transition will be straightforward as adult services simply need to begin funding the package which is already in place.

41

Case study CA 2014 Statutory Guidance

Isabelle's story (para 16.15)

- However, when they talk in more detail to the school and the parents they realise that when Isabelle leaves school at 19 it will not be appropriate for her to live with her parents and she will require substantial supported living support and a college placement.
- Due to the nature of Isabelle's needs, she will need a lengthy transition in order to get used to new staff, a new environment and a new educational setting.

42

Case study CA 2014 Statutory Guidance

Isabelle's story (para 16.15)

- The college has also indicated that that they will need up to a year to plan for her start.
- It is therefore of significant benefit for the transition assessment to take place around the age of 16, looking at both the funding for support from age 18 – 19 and the longer-term options.

43

Transitions ~ at 18

- LA must decide whether to treat the assessment as a needs assessment under the 2014 Act.
- Must consider when the it was carried out and if any of the circumstances have changed
- **The Statutory Guidance** (para 16.64) where it is decided that the YP's or carer's needs are to be met under the Care Act the authority must 'undertake the care planning process as for other adults – including creating a care and support plan and producing a personal budget'

44

Transitions ~ at 18

CA 1989 s17ZH enables the Children Services & Adult Services to decide when it is best to transfer their respective responsibilities.

SEND Code states (para 8.67):

- Under no circumstances should young people find themselves suddenly without support and care as they make the transition to adult services. Very few moves from children's to adult services will or should take place on the day of someone's 18th birthday.

45

Transitions ~ at 18

CA 1989 s17ZH ~ LAs can continue to provide services under CA 1989 s17 and/or CSDPA 1970 s2 even though the young person has reached the age of 18.

Statutory Guidance (para 16.67)

- families must not be faced with a gap in provision of support on the 18th birthday - if by that date the necessary support is not in place then the existing services must be continued until the 'relevant steps have been taken'
