

Disabled Children & the Law

Luke Clements
www.lukeclements.co.uk

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Programme

- 1 Key social care law
- 2 Assessing a disabled child's needs
- 3 The 'eligibility decision': what needs must be met
- 4 What type of supports can be provided
- 5 The rights of parent carers and young carers
- 6 Transitions

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Assessing need

“What if” question

- Normally it is quite clear that a child has an impairment – ie is a 'disabled child'.
- There is then a duty to assess 'what will happen if care and support is not available'.
- The greater the risk to the child's / the family'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.

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- Once it is decided that care and support is required to avoid significant risk to the child or their family's well-being then there is a duty to provide that support
- AND
- to spell out in a care plan what the necessary support is (quantity and quality)

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Care & Support Planning

how, who, what and when?

- What the assessed needs are
- How the need is to be met
- Who is going to be responsible for meeting these needs
- When these support services are going to be provided
- Etc etc

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Definitions

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Key Law

Children Act 1989 section 17

Duty to safeguard and promote the welfare of 'children in need';

- A child is 'in need' if they are:
 1. at risk of neglect or abuse or
 2. disabled

These are two very different groups of children.

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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]

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Assessing social care needs

- All disabled children (who meet the above definition) are 'children in need' and so are entitled to an assessment.
R (G) v. Barnet LBC (2003)
- All parents caring for a disabled children are entitled to a Parent Carer's Needs Assessment (**s17ZD CA 1989**)
- All people under 18 providing care for a disabled child have a right to a Young Carers Assessment (**s17ZA CA 1989**)
- If a need for support is identified there is a duty to meet this under the **CA 1989** (and for disabled children, under the **Chronically Sick and Disabled Persons Act 1970**).

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Assessing disabled children

Even where the sole reason for contact with children's social care was because of the social care needs of an autistic child, there was a tendency to use the social work assessment as an opportunity to judge parenting capacity through a child protection lens rather than through a lens of social care need. This has long been a complaint of families caring for disabled children.

Chief Social Workers for Adults & the
Chief Social Worker for Children and Families
A spectrum of opportunity (Doh 2021)

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Assessing disabled children

'... Some families with disabled children tell us they are put off seeking support from children's social care because of fear they will be blamed for challenges their children face and treated as a safeguarding concern rather than receive the support they need ...'

• *The SEND Review (2022) p 10.*

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Eligibility decision

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Eligibility decision

Not every disabled child will be entitled to support from a council.

Councils must have 'eligibility criteria' that explain how in general they decide which disabled children will be supported.

These criteria must be published in the councils 'local offer'

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

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Assessing disabled children

Problem

Some authorities state that only children who meet the criteria for an assessment by their Disabled Children's Team (DCT) can access the range of supports under the CA 1989 / CSDPA 1970.

- They then create severe criteria that have to be satisfied to have an assessment by the DCT. Criteria more restrictive than the those in the CA 1989 / CSDPA 1970.
- This is unlawful
- A disabled child's needs for support depend on their needs – not on which social services team assess them.

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Eligibility criteria

We hear frequently that thresholds for support (both at section 17 and early help) are very high. This point has particularly been raised by families of disabled children.

- *"Families struggle to get section 17s due to no 'safeguarding' issues ... By not providing support initially families are ending up in crisis." – Parent*
- *"[We] need a lower threshold for help so they don't have to be in crisis point to get some help." – Parent*

MacAlister Review Final Report (2022) p37.

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Eligibility criteria

Eligibility for Family Help should be set out in a sufficient level of detail to give a common understanding, based around the principle of families facing significant challenges that could pose a threat to providing their child with a loving, stable, safe family life. A national definition should also reference specific groups of children and families who might need extra help

- The report then footnotes that this would include – among others - disabled children and young carers

MacAlister Review Final Report (2022) p37.

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Assessing disabled children

- A 2021 ombudsman report concerned a parent who was experiencing considerable difficulties caring for her son who had genetic and developmental conditions, learning difficulties, PDA and autism and requested that the authority undertake a Parent Carer Needs Assessment (PCNA).
- This was not done because the authority's Disabled Children's Team considered that her son did not meet its the threshold for an assessment.

no 20 002 897 (Essex CC) 17.02. 21.

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Assessing disabled children

- A 2018 LGO report concerned a child with significant mental health needs and in relation to whom there was professional acceptance that respite care was 'needed to prevent a family breakdown'.
- This was refused because his impairment was not sufficiently severe to enable him to receive a service from the Council's child health and disability team.

Ombudsman finding (para 46)

- Regardless of which team provided the care, the Council assessed the need and was under a duty to provide [the] respite.

no 17 011 899 (Poole BC) 26.10.18.

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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

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

The High Court held that:

- LA must demonstrate that its assessment has been undertaken with the necessary rigour and width
- 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'.

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Ombudsman (2018)

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 against Lambeth LBC 13.6.18 para 37.

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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 and what skills they require;
- 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;
- Plan B ~ what the contingency plan is if things go wrong;
- who is monitoring the plan;
- when the review is to happen

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Care and support services

A range of specific services are reserved for disabled children under the **Children Act 1989** & the **Chronically Sick and Disabled Persons Act 1970** – for example:

- Personal care in the home and in the community;
- Community based recreational services;
- Respite / short breaks care etc;
- Direct payments;
- Adaptations / equipment, fixtures, fittings etc;
- Travel to community based services.

Parents of disabled children are entitled to an assessment of their needs – Parent Carer Needs Assessment (PCNA)

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Care & Support Plans

The duty to meet the needs is 'non resource-dependent'.

- ie if the assessment identifies a need for (say) 10 hours of personal care services a week – then this need must be met precisely and it is not something that the LA can 'trim' because it has to make cutbacks due to resource shortages.

R v Islington LBC ex p Rixon (1997)

- There can be no 'maximum' packages

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Care & support plans

Local authority financial difficulties

- A local authority's finances are relevant when it decides *how* to meet the eligible needs of an individual 'but not *whether* those needs are met'. (para 10.27)
- LAs 'should not set arbitrary upper limits on the costs [they are] willing to pay to meet needs through certain routes' (para 10.27)

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Direct payments duty to 'offer'

Choice

- Once a LA has decided that a person has an eligible for non-residential care, then (subject to certain conditions) it can be required to provide DPs in lieu of services.
- Unlawful for a LA to have a policy of refusing DPs for certain services (eg block funded respite care).
Complaint no 19 008 804 (Staffordshire CC 2020).
- Or of requiring reasons to be given for wanting a DP.
- Unlawful for a LA not to directly commission care but to put individuals in a position where they feel that they have to have a DP.
Lincolnshire County Council No. 16 019 120 2017 para 13.

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The right to a direct payment

A parent complained that a LA commissioned 'Early Help' service was unsuitable for her son and asked for a DP so that she could purchase something suitable.

The LA accepted that her son was disabled, but said he was not sufficiently disabled to warrant an assessment by the disabled children's team.

It said it has a graduated approach to services as follows:

- Level 1 (universal help);
- Level 2/3 (early help)
- Level 4 – statutory intervention is required either there is a child in need or

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The right to a direct payment

Level 4 was defined as 'a child in need of protection' or one that had complex care needs and disabilities which require specialist services.

It stated that only children at Level 4 were eligible for direct payments

Ombudsman

- In finding maladministration he held that the child was 'entitled to direct payments under the 1989 Act regime because he is disabled' (para 30).

Complaint no 0 012 558 against Liverpool CC 14.12.21

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Care & support plans

Funding Panels



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Care & support plans

Funding Panels

... . In some cases, panels may be an appropriate governance mechanism to sign-off large or unique personal budget allocations and/or plans. Where used, panels should be appropriately skilled and trained, and local authorities should refrain from creating or using panels that seek to amend planning decisions, micro-manage the planning process or are in place purely for financial reasons. ... (para 10.85)

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Funding panels

A panel rejected an assessor's identification of the adult having eligible needs:

- I am not persuaded that this panel was purely looking at compliance with the Care Act and cost effectiveness. If this was its remit, it failed to do this adequately. It is possible Miss X's needs could be met in other ways but with proper care and support planning in consultation with Miss X. Not through a decision in direct contravention of the care manager's recommendations by a panel who was not involved in the assessment.

Complaint. 15 017 591 Brighton & Hove CC 30/8/16.

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Funding panels

Reports from assessors that are required to go to a 'panel' must include a recommendation from the assessor as to her or his professional opinion as to what care is required.

Complaint 15 020 384 Bromley LBC 7/9/16

Panels must provide reasons for any decision to reduce a care package as well as having a 'proper record' of what information it took into account when reaching its decision.

Complaint 16/003/985 Lewisham LBC 8/8/17 para 38

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Contracting out

Councils cannot contract out responsibility for care when they contract out the provision: poor quality care by a council funded provider is poor quality care by the council itself.

Michael King Local Government and Social Care
Ombudsman 27 February 2018

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Care and support services

Early Help

Not mentioned in the legislation

Proposed by the Laming & Munro abuse enquiries.

Purpose is to provide help to prevent children who may be at risk of neglect or abuse becoming 'CiN'.

It cannot apply to disabled children because they are already 'CiN'.

Wholly inappropriate to think that councils can 'prevent' disability or 'cure' it by a short term / time limited intervention

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Care and support services

'For families who need help, there must be a fundamental shift in the children's social care response, so that they receive more responsive, respectful, and effective support. To reduce the number of handovers between services, we recommend introducing one category of "Family Help" to replace "targeted early help" and "child in need" work, providing families with much higher levels of meaningful support. ...'

MacAlister Review Final Report (2022) p8.

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Care and support services

Parenting classes

Not mentioned in the legislation

Wholly inappropriate as it:

- Locates the 'problems of disability' in a child's family.
- Fails to recognise the social, administrative and attitudinal problems that disabled people and their families encounter
- A Poor Law concept in direct conflict with the social model of disability

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Assessing parent carers (ie a parent caring for a disabled child)

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Parent carers

Children Act 1989 s17ZD

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

- A PC is an adult 'who provides or intends to provide care for a disabled child for whom the adult has parental responsibility'
- The assessment must have regard to the well-being of the parent carer;
- "well-being" has same meaning as in Care Act 2014.

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Well-being (s1 Care Act 2014)

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.

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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

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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

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

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Non-parent carers

- People who provide or intend to provide, regular and substantial care for a disabled child (but don't have 'parental responsibility' for that child)
- ie unmarried non-parent partners, adult siblings etc etc have a right to an assessment under:

Carers (Recognition and Services) Act 1995 s1.

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Assessing young carers

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Young carers

Children Act 1989 s17ZA

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

- A YC is "a person under 18 who provides or intends to provide care for another person" (but excluding paid / formal volunteers)
- Detailed assessment regulations;
- Young Carers' (Needs Assessments) (England) Regulations 2015

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YC Assessment regs

Duty to consider

- the YC's age, understanding and family circumstances;
- the wishes, feelings and preferences of the young carer;
- differences of opinion between YC, YC's parents and the person cared for, concerning the care provided; and
- the outcomes the YC seeks from the assessment.
- young carer's wishes to participate in education, training, recreation, work.

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Transitions

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Transition into adulthood

Disabled child
Parent
Sibling

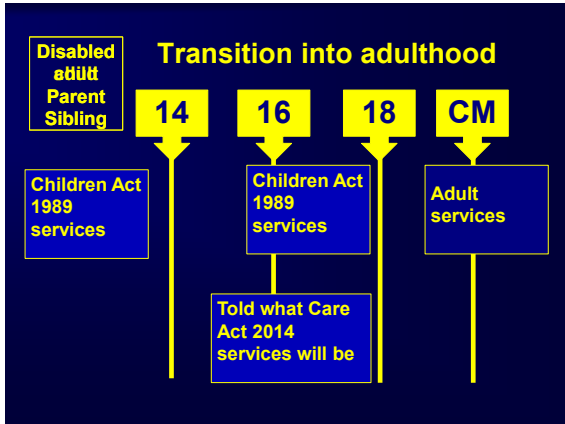
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Children Act
1989
services



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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

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Transitions ~ at 18

CA 1989 s17ZH enables the Children Services & Adult Services to decide the best time to transfer when is best 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.

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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'
