

Disability Law Service

Offering free, confidential legal advice and
representation for disabled people

Assessments and Services for Disabled Children

Assessments and Services for Disabled Children

Introduction

Disabled children in England and Wales can be eligible for services under a range of statutes (laws). One of the main statutes laying out the responsibilities of Local Authorities to disabled children in their area is the **Children Act (CA) 1989**. However, children may also be eligible for services under the general statutes related to community care, such as the **National Assistance Act (NAA) 1948**, the **Chronically Sick and Disabled Persons Act (CSDPA) 1970** and the **National Health Service and Community Care Act (NHSCCA) 1990**.

This factsheet outlines the responsibilities Local Authorities have to disabled children under the above statutes, and also provides information on how you can go about obtaining the services you or your children might be entitled to.

Children Act 1989

Section 17(1) of the Children Act 1989 places a general duty on Local Authorities to provide services to safeguard and promote the welfare of children within their area who are in need.

The definition of a 'child in need' under the **Children Act 1989** is as follows:

'For the purposes of this Part, 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 or such other disability

as may be prescribed; and in this part 'development' means physical, intellectual, emotional, social or behavioural development; and 'health' means physical or mental health.'

This definition is quite broad, and would usually include a child with Aspergers syndrome or Attention Deficit Hyperactivity Disorder.

The main duties of Social Services Departments to provide services for children and their families are set out in Schedule 2 of the **Children Act 1989**. A Local Authority must:

1. Identify children in need in its area and provide information about services;
2. Maintain a register of disabled children;
3. Provide services for disabled children which minimise the effect of their disabilities and gives them the opportunity to lead lives as normal as possible;
4. Provide for children living with their families the following:
 - a. Advice, guidance and counselling;
 - b. Occupational, social, cultural or recreational activities;
 - c. Home help (which may include laundry facilities);
 - d. Facilities for or assistance with travel to and from home, to take advantage of services;
 - e. Assistance to enable child and family to have a holiday.

The range of services available to disabled children is very wide and can include the giving of assistance in kind or, in exceptional circumstances, in cash. The Act also recognises that the services can be provided to the child **or** a member of the family. For this reason, when making an assessment, social services should take into account the needs of the whole family as well as that of the individual child. The kinds of services commonly provided to disabled children and/or their families include respite care and joint-funded residential education with the Local Education Authority.

Government Guidance on Children Act 1989

Policy guidance has been issued by the Government in relation to the **Children Act**. Local authorities are bound by it unless they can provide clear and adequate reasons for their decision not to. The guidance contains all the details about what local authorities are expected to do in order to fulfil their statutory obligations and is therefore extremely useful for parents.

The key guidance in England concerning the Children Act 1989 is **The Framework for assessing children in need and their families 2000** Policy Guidance.

You can find this guidance on the Department of Health's website which is at: www.doh.gov.uk.

Respite Care under the Children Act

There is guidance that is helpful on respite care (also known as short-term breaks). It states it 'should be provided in the context of a package of care for families' and recommends that authorities should provide more flexible short-term care offering:

1. A local service;
2. Good quality child care in which parents have confidence and which ensures that the child is treated first as a child and then for any disability which may require special provision;
3. Planned availability with parents choosing patterns of use and being able to use a service flexibly;
4. A service which meets the needs of all children. Concern has been expressed about the lack of respite care for children with complex needs;
5. Care which is compatible with the child's family background and culture, racial origin, religious persuasion and language;

6. Age-appropriate care – so that young children and adolescents are given relevant care and occupation; **and**
7. An integrated programme of family support which sees planned respite care as part of a wider range of professional support services to meet family needs.

Other Types of Assistance

In addition to the duties placed on Local Authorities under the **Children Act 1989**, there are also duties placed on Local Authorities to provide services detailed in the **National Assistance Act 1948** and the **Chronically Sick and Disabled Persons Act 1970**.

Under **Section 29 NAA 1948**, Local Authorities have a duty to provide disabled people in their area with things such as day centres, social and recreational activities, help with travel costs and help finding suitable accommodation.

Meanwhile, **Section 2** of the **Chronically Sick and Disabled Persons Act 1970** lists the domiciliary services (home based services) available to disabled people, and the duty on Local Authorities to provide these services extends to both disabled children and adults. The duty is to provide any of the following that are necessary to meet the needs of a disabled person:

1. Help in the home which can include a home help (a person who provides practical help with things such as cooking, cleaning and so on);
2. Help getting a wireless connection to the internet, a TV, library services or similar recreational facilities;
3. Lectures, games, outings or other recreational facilities outside the home or help taking advantage of educational facilities in the area;
4. Facilities to assist travel to and from home to take part in any services provided for disabled people in the community;

5. Help arranging any work to adapt the home or provide any extra facilities designed to make the home safer, more comfortable or easier to live in;
6. Help going on holiday whether this is provided under arrangements made by the Local Authority or otherwise;
7. Providing meals in the home or somewhere else.

The Need for an Assessment

In order to decide whether or not to provide services to a disabled child, social services must carry out an assessment. This is essentially an information gathering exercise, the aim being to ascertain the needs of the disabled child and his/her family. Although the **Children Act 1989** does not specifically state that disabled children have a right to an assessment, the Courts have held that there is a public law duty on Local Authorities to carry out an assessment. Disabled children should therefore be assessed under the **Children Act 1989** even if any services they subsequently receive are given under other community care statutes such as the **CSDPA 1970**.

If you have a disabled child and would like an assessment you should make a request to Social Services (preferably in writing and addressed to the Director of Social Services) for one to be carried out. It would be useful to Social Services if you provided information on your child's disability and perhaps the type of services you envisage would meet his/her needs (and yours as carer).

The guidance mentioned earlier directs Local Authorities to undertake assessments 'in a open way and should involve those caring for the child, the child and other significant persons.' The particular needs of the child must be taken into account – that is in relation to health, development, disability, education, religion, racial origin, and cultural and linguistic background.

Other important guidance in this area is the **Framework for the Assessment of Children in Need and their Families** (March, 2000), produced by the Department of Health, and again authorities must adhere to it or at least have good reason not to.

Timetable for assessments

The Assessment Framework expects Social Services to adhere to a strict timetable when carrying out assessments on children. A decision about how to respond to a new referral is to be made and reported to person referring within one working day. An initial assessment is defined as a brief assessment which should consider in outline the Local Authority's Assessment Framework. It should also determine whether the child is in need, the nature of services needed and from where, in what timescale, and whether a more detailed core assessment is required. The initial assessment should be completed within seven working days.

If, following this initial assessment, it is decided that a full core assessment is required this core assessment should be completed within 35 working days. An initial assessment may need to involve other agencies, while the core assessment certainly will.

How to conduct the core assessment

In summary the Guidance for any assessment is as follows:

1. There are 10 principles underpinning the assessment framework, the first of which is that the assessment shall be 'child centred';
2. That the assessment should take account of three 'domains':
 - a. The child's developmental needs;
 - b. The parents' or caregivers' capacities to respond appropriately;
 - c. The wider family and environmental factors.
3. The assessment should be based on a full understanding of what is happening to the child in the context of the family and the wider community; 'nothing can be assumed';
4. The assessment should be a continuing process, not a single event;

5. The process of assessment is in two parts:
 - a. An initial, or brief, assessment, which should be undertaken within 7 days of referrals; **and**
 - b. A core assessment;
6. At the conclusion of the core assessment there should be a 'Children in Need Plan' which will involve the child and family members as appropriate and the contributions of all agencies.

Local Authorities have the power to involve other public bodies to help them perform their assessment/service provision functions and a specific duty to co-operate exists under **Section 27 of the Children Act**. If Social Services requests the help of another authority to carry out its duties (for example, Health, Education and/or Housing), that authority must comply with the request if it is compatible with their own statutory or other duties and obligations, and does not unduly prejudice the discharge of any of their functions.

The Children Act guidance emphasises the importance of involving other agencies - paragraph 5.3 states:

'The requirements of children with disabilities may need to be met from a number of sources. In conducting assessments and managing the care provided, Social Service Departments will need to ensure that all necessary expertise is marshalled and that all those providing services are involved from both within and beyond the Social Service Department. The outcome of the assessment should be a holistic and realistic picture of the individual and family being assessed.'

These 'agencies' could include a child's school, GP, physiotherapist, speech and language therapist, occupational therapist and other professionals they may have had contact with. In an ideal world, Social Services Departments will approach these people for their comments on your child's needs but this does not always happen. You should always consider contacting them

yourself and asking them to prepare a report/letter that can be copied to Social Services.

The Guidance takes the view that the professionals carrying out the assessment need to start by assuming that disabled children have the same basic needs as all children, but because they are living with impairments some may require additional support, assistance and intervention.

Care Planning

Unlike the situation after the assessment of adults under **s47 National Health Service and Community Care Act 1990**, there are no strict rules in the **Children Act 1989** governing how Local Authorities should decide whether an assessed child is eligible for support and services.

Once needs have been assessed the social worker (and care management team) will decide which needs, if any, are sufficiently high to warrant the provision of services. If services are to be provided, then a care plan will need to be designed in agreement with the relevant service providers, carers and the service user. If a decision is made not to provide services, then Social Services should provide a clear explanation and reasons for this decision. (If you do not agree with this decision then the complaints procedure can be invoked.)

Carers Assessments

If you are your child's 'carer', (defined as the person providing a substantial amount of care on a regular basis) you are entitled to have an assessment in your own right of your ability to provide and continue to provide care for your child, followed by the provision of any services and support for which you are eligible. This assessment will be under **The Carers (Recognition and**

Services) Act 1995 and the **Carers (Equal Opportunities) Act 2005**. This assessment can be carried out either separately or in conjunction with your child's needs assessment. The local authority must take the result of your assessment into account in deciding what, if any, services to provide to your child under **Section 17 Children Act 1989**.

Some of the services you may be assessed as needing include respite, assistance in the home, assistance with gardening, or being provided with training and/or counselling.

Direct Payments

Direct payments are an alternative to Social Services directly providing your care services. Direct payments provide weekly payments to disabled people or carers to allow them to purchase the services they are assessed as needing. Local authorities can also make direct payments to persons with parental responsibility for a disabled child or a disabled child aged 16 or 17, in lieu of services which would have otherwise been provided for them under **Section 17 of the Children Act 1989**.

You are not permitted to hire just anybody to deliver these services. Regulations set out a list of people from whom services may not be secured by means of a direct payment – in general these are 'close relatives', e.g., parents, aunt, uncle, grandparents, son, daughter – and includes in-laws and spouses of these relatives.

Charges

It is important to note that local authorities have power to charge for the services they provide under the **Children Act**. It is the carer's (i.e. the parent's) means that are assessed, unless the young person is aged 16 or

older, in which case the child him/herself. Authorities can only recover such charge as in their discretion they consider appropriate, however:

1. No person can be charged while in receipt of income support, working families tax credit or disabled person's tax credit; **and**
2. Where the authority is satisfied that a person's means are insufficient for it to be reasonably practicable for him or her to pay, the authority cannot require him or her to pay more than s/he can reasonably be expected to pay.

If you would like further information on any of the issues covered in this factsheet, or on any other community care issues generally, please contact the Disability Law Service on 0207 791 9800 or by email on advice@dls.org.uk

Legal Disclaimer

Although great care has been taken in the compilation and preparation of this work to ensure accuracy, DLS cannot accept responsibility for any errors or omissions. All information provided is for education / informative purposes and is not a substitute for professional advice. Any organisations, telephone numbers and links to external web-sites have been carefully selected but are provided without any endorsement of the content of those sites.

For further advice on these matters please contact:

Disability Law Service

Telephone: **020 7791 9800**

Minicom: **020 7791 9801**

Fax: **020 7791 9802**

Email: **advice@dls.org.uk**

Website: **www.dls.org.uk**

Or write to us at: 39 – 45 Cavell Street, London E1 2BP

Community
Legal Service



advice^{UK}
MEMBER



Registered Charity Number 280805, Company Registration Number 1408520