

Disability Law Service

Offering free, confidential legal advice and
representation for disabled people

Assessments and Services for Disabled Children

– what's involved?

Assessments and Services for Disabled Children – What's involved?

Outlined below are the responsibilities local authority Social Services Departments have towards disabled children, the relevant legislation which relates to assessments for children and carers, and what services can be provided. Please note that for the purposes of the Children Act, 'children' are defined as being under 18 years of age.

Children Act 1989

Section 17(1) of the Children Act 1989 ("the Act") 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' includes a disabled child.

The main duties of Social Services Departments to provide services for children and their families are set out in Schedule 2 of the Act. A local authority must:

- identify children in need in their area and provide information about services;
- maintain a register of disabled children;
- provide services for disabled children which minimise the effect of their disabilities and gives them the opportunity to lead lives as normal as possible;
- provide for children living with their families the following:
 - advice, guidance and counselling;
 - occupational, social, cultural or recreational activities;
 - home help (which may include laundry facilities);
 - facilities for or assistance with travel to and from home, to take advantage of services;
 - 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 LEA.

Other types of services

Section 2 of the Chronically Sick and Disabled Persons Act 1970 lists the domiciliary services available to disabled people, both children and adults. The duty is to provide any of the following that are necessary to meet the needs of a disabled person:

- practical assistance in the home
- wireless, tv and other recreational facilities, lectures, games and outings
- assistance in taking advantage of educational facilities
- travel to facilities such as day centres
- assistance and arranging adaptations to the home, facilities which increase safety, comfort or convenience

- facilitating the taking of holidays

Government Guidance to Local Authorities on Services

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.

In relation to disabled children in particular, the Children Act guidance (Vol 2, Family Support) states:

“These services should help in the identification, diagnosis, assessment and treatment of children with physical and mental handicaps, or suffering from mental disorder and help those children in their adjustment to handicap, and in overcoming limitations of mobility and communication in appropriate ways. This may include the funding and provision of equipment such as communication aids and interpreters. Authorities will need to consider in co-operation with the relevant agencies the child’s overall development needs – physical, social, intellectual, emotional and behavioural – when considering what sort of services are required.”

Respite Care

The Children Act guidance 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:

- a local service.
- 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.
- planned availability with parents choosing patterns of use and being able to use a service flexibly.
- a service which meets the needs of all children. Concern has been expressed about the lack of respite care for children with complex needs.
- care which is compatible with the child’s family background and culture, racial origin, religious persuasion and language.
- age-appropriate care – so that young children and adolescents are given relevant care and occupation; and
- 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.

Assessments

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. If you have a disabled child and would like an assessment, you will need to 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 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) Department of Health, and again authorities must adhere to it or at least have good reason not to.

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 the referrer within one working day. An initial assessment is defined as a brief assessment which should consider in outline the 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, and, if one is undertaken, the core assessment is to be completed within 35 working days. An initial assessment may well need to involve other agencies, and a core assessment certainly will.

A useful summary of this Guidance and the assessment framework itself was set out in a recent court case. (*R on the application of AB and SB v Nottingham CC* 4 CCLR 295, 299):

“

- there are 10 principles underpinning the assessment framework, the first of which is that the assessment shall be 'child centred';
- that the assessment should take account of three 'domains':
 - the child's developmental needs;
 - the parents' or caregivers' capacities to respond appropriately;
 - the wider family and environmental factors.
- 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';
- the assessment should be a continuing process, not a single event;
- the process of assessment is in two parts:
 - an initial, or brief, assessment, which should be undertaken within 7 days of referrals, and
 - a core assessment
- 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...”

The Judge in this case went on to say:

“There should be a systematic assessment of needs which takes into account the three domains (child's developmental needs, parenting capacity, family and environmental factors) and involves collaboration between all relevant agencies so as to achieve a full understanding of the child in his or her family and community

context. It is important, moreover, to be clear about the three stage process: identification of needs, production of a care plan, and provision of the identified services.” (page 306 per Richards J)

Where a child's need is affected by housing issues his/her housing needs should be assessed under section 17 of the Children Act (*R v Tower Hamlets ex parte Bradford* (1998) 1 CCLR 294).

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, SSDs will need to ensure that all necessary expertise is marshalled and that all those providing services are involved from both within and beyond the SSD. 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.

Care Planning

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.)

Government policy guidance on care management includes:

- *“Decisions on service provision should include clear agreement about what is going to be done, by whom and by when, with clearly identified points of access to each of the relevant agencies for the service user, carers and for the care manager... where the agencies have agreed as a result of the assessment and care planning process to provide a service, they will be expected to deliver it.” (para 3.26)* Do remember that this means the care plan must contain details of

the times and/or dates of how often the service is going to be provided and who the service provider will be.

- *“The preferences of carers should be taken into account and their willingness to continue caring should not be assumed. Both service users and carers should therefore be consulted.... The care plan should be the result of a constructive dialogue between service user, carer, social services staff and those of any other agency involved.”* (para 3.28)

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 of your ability to provide and continue to provide care for your child, and, if appropriate, services provided to you. 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 under section 17 Children Act.

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 provided services. Direct payments allow carers to purchase the services they are assessed as needing as carers to support them in their caring role. 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.

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:

- a) no person can be charged while in receipt of income support, working families tax credit or disabled person's tax credit; and
- b) 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.

Summary

Always be sure to keep copies of all correspondence you write or receive and do ask for copies of the following documents:

- The single Social Service's Assessment Report together with other relevant documents from the various agencies involved
- Care plans (current or proposed) and any reviews
- Your local authority's Community Care Plan (this is a general information guide setting out policies and practices, what services the local authority provides, and who to)
- Your local authority's Eligibility Criteria (these set out exactly what needs a person must have before services will be provided)
- Your local authority's complaint procedure (just in case!)

If you require any further advice, community care advice line sessions are held twice a week – Tuesdays and Thursdays 10.30am – 1pm (ph. 020 7791 9800).

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:

The Disability Law Service

Telephone: **020 7791 9800**

Minicom: **020 7791 9801**

Fax: **020 7791 9802**

Email: advice@dls.org.uk

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



Registered Charity Number 280805, Company Registration Number 1408520