

Appendix 21: Local Authority Duties and Service User and Carer Rights

Local authority duties in respect of children with disabilities and their carers

This Annex provides a summary of the key duties of local authorities to support children with disabilities and their carers. It is intended to provide an illustrative overview and useful context for the guidance, rather than as a comprehensive list or a replacement for legal advice.^{1 2}

Definitions

Disability and need as defined by the Children Act 1989

Section 17 (s.17) of the Children Act 1989 (CA 1989) specifies that a child will be deemed 'in need' if:

- (a) he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by a local authority under this Part;
- (b) his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services; or
- (c) he is disabled.

CA 1989 s.17(10)

Disability is then defined 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.

CA 1989, s.17(11)

Disability as defined by the Equality Act 2010

¹ The Department for Education (DfE) publishes a more detailed list of duties affecting local authorities in respect of education, children and young people's services: DfE (2012) *Statutory duties of local authorities* [online] Available at: <http://www.education.gov.uk/childrenandyoungpeople/strategy/a00198443/statutory-duties-of-local-authorities> (Accessed: 13.02.13)

² The Legal Action Group has published a summary of statutory duties in relation to disabled children. See: Broach, S. Clements, L. & Read, J. (2010) *Disabled Children. A legal handbook*. London: Legal Action Group Available online at: <http://www.councilfordisabledchildren.org.uk/resources/cdcs-resources/disabled-children-a-legal-handbook> (Accessed: 13.02.13)

Disability is a 'protected characteristic' under the Equality Act 2010 (EA 2010) and defines a person (P) as disabled if:

- (a) P has a physical or mental impairment, and
- (b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

EA 2010, Chapter 1, s.6

Non-statutory guidance for adjudicators, which supports the EA 2010, highlights that disability can arise from impairments that are:

developmental, such as autistic spectrum disorders (ASD), dyslexia and dyspraxia.

Office for Disability Issues, 2010, p8

Assessment of need and service provision

Assessment of need

The 'Assessment Framework' (Dept. of Health *et al.*, 2000) places a statutory duty on local authorities to assess 'children in need'. Local authorities should then provide services for children where such interventions are warranted, in order:

- (a) to minimise the effect on disabled children within their area of their disabilities; and
- (b) to give such children the opportunity to lead lives which are as normal as possible.

CA 1989, Sch.2, Part 2, para.6

A guide published by the Legal Action Group highlights the importance of keeping separate the 'decision that a need must be met' from 'the decision on the way to meet the need' (Broach *et al.*, 2010) recognising that the CA 1989 is not prescriptive about service provision and, therefore, that local authorities and their partners can provide the particular context and preferences of the child and family:

For example, a local authority may conclude that there is a need for a child and his or her carers to have a short break from each other. This need can be met in a variety of ways - e.g. by a way of a sitting service in the child's home, by the child attending a day service or activity away from the home and so on.

Broach *et al.*, 2010, 3.28

Provision of services to address identified need

The local authority has a statutory obligation to address need 'where the criteria for specific duties in [Chronically Sick and Disabled Persons Act, CSDPA] 1970 s.2...or CA 1989 s.20...are met or, if not, whether 'intervention is required' under CA 1989 s.17' (Broach *et al.*, 2010, 3.29).

For children living with their families, for example, the CA1989 identifies that providing services to address need might encompass a wide range of advice and practical support, as follows:

- (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, travelling to and from home for the purpose of taking advantage of any other service provided under this Act or of any similar service;
- (e) assistance to enable the child concerned and his family to have a holiday.

CA 1989, Sch.2, 1 (8)

A number of services local authorities are required to provide, where appropriate, under the CSDPA 1970 overlap with those contained within the CA1989, as follows:

- (a) the provision of practical assistance for that person in his home;
- (b) the provision for that person of, or assistance to that person in obtaining, wireless, television, library or similar recreational facilities;
- (c) the provision for that person of lectures, games, outings or other recreational facilities outside his home or assistance to that person in taking advantage of educational facilities available to him;
- (d) the provision for that person of facilities for, or assistance in, travelling to and from his home for the purpose of participating in any services provided under arrangements made by the authority under the said section 29 or, with the approval of the authority, in any services provided otherwise than as aforesaid which are similar to services which could be provided under such arrangements;
- (e) the provision of assistance for that person in arranging for the carrying out of any works of adaptation in his home or the provision of any additional facilities designed to secure his greater safety, comfort or convenience;
- (f) facilitating the taking of holidays by that person, whether at holiday homes or otherwise and whether provided under arrangements made by the authority or otherwise;
- (g) the provision of meals for that person whether in his home or elsewhere;
- (h) the provision for that person of, or assistance to that person in obtaining, a telephone and any special equipment necessary to enable him to use a telephone

CSDPA 1970, s.2 (1)

Under conditions set out in the CA 1989 (s.20), where disabled children cannot be accommodated at home, the local authority has a duty to accommodate them and to ensure they necessary provisions are in place to support and safeguard them while they are 'looked after'.

Support for families and carers

Under the CA 1989, support for children with disabilities should take into account the needs of a whole family as well as those of an individual child. Furthermore, under the Carers (Recognition and Services) Act 1995 (CRSA 1995), carers of any age have the right to an assessment of their ability to provide or continue to provide care.

Recent statutory guidance, Breaks for Carers of Disabled Children Regulations 2011 (BCDCR), issued under paragraph 6 of Schedule 2 to the CA 1989, specifies that the local authority should provide ' a range of services which is sufficient to assist carers to continue to provide care or to do so more effectively' (BCDCR 2011, s.4. 2a). These cover home-based daytime and overnight care, community-based education and recreation activities and, services aimed at supporting carers outside of working hours. The requirement for the local authority to provide home-based or community-based short breaks is also addressed by CSDPA 1970, while short breaks away from the home (i.e. via residential and foster care) are required by the CA 1989, providing the criteria within s.20 of the CA 1989 are met.

Direct payments

Parents or carers of children with disabilities can request to purchase services directly, rather than have this mediated by the local authority, through the use of 'direct payments'. This is a statutory scheme (set out in the Community Care, Services for Carers and Children's Services (Direct Payments) Regulations 2009), and supported by guidance issued under the Health and Social Care Act 2001 (HSCA 2001) which sets out the conditions under which people are eligible to participate.

By receiving regular payments, carers of disabled children can purchase particular services they have identified as aiding their child. If the disabled child is 16 or 17 they can request to do this themselves. This applies to any service, regardless of the statute under which it is being provided although there are some restrictions which apply (for example, limitation of the length of residential respite care that can be purchased via a direct payment arrangement).

Education

Where children have, or are suspected to have Special Educational Needs (SEN), local authorities and their partners are required to make appropriate provision in the context of 'a legal presumption in favour of mainstream education' (Broach *et al.*, 2010, p4). SEN provision is mandated by the Education Act 1996, as amended by the Special Educational Needs and Disability Act 2001, c.10. This requires authorities to conduct a statutory assessment and, if necessary, to complete and implement provision to address a

'Statement of special Educational Needs' (SEN). Broach *et al.* highlight the 'significant overlap between the duties to children with SEN and the important duties on schools and LEAs under the Equality Act 2010' (2010, p6).

Current SEN legislation is being reformed and the Children and Families Bill 2012-13 which addresses this is currently in the first stage of Parliamentary scrutiny.

Transition

The Disabled Persons (Services, Consultation and Representation) Act 1986 (DPSCRA 1986) requires local authorities to assess the needs of young people with SENs at aged 14, to consider their likely support requirements when their education ends and plan a response accordingly. The CSDPA 1970 applies to both children and adults but there may be different eligibility thresholds for adults' and children's services for people with disabilities. Under the CA 1989, throughout transition and service provision young people's views and preferences should be central to decision-making and planning.

The Autism Act 2009 does not cover children and young people's services however becomes relevant to them when reach the age of 18 at which point local authorities are subject to a number of statutory duties. The relate to: the training of key staff in the locality; the planning and delivery of specialist services; the establishment of diagnosis and assessment pathways; and, the local-level leadership of autism work.

References

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