Using the Law to Fight Cuts to Disabled People's Services
A practical guide for campaigners – disabled people, families, carers and local groups
(Updated version July 2012[1])

Introduction

This paper is intended to help campaigners – including disabled people and those supporting them – understand how the law can be used to help fight cuts to valued services in their area. The paper is intended to be read by those who do not have a legal background. However, any individual or local group who is considering legal action in relation to actual or proposed cuts to services should not rely only on this paper but should seek specialist advice, including legal advice.

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This guide is based on another recent paper that was written for the Every Disabled Child Matters campaign and was aimed particularly at parents, carers and local groups concerned about services for disabled children.[2] This guide focuses on legal challenges to cuts to services for disabled adults, but also considers some of the key issues for disabled children. Many of the principles set out in this guide will also extend to other groups in need of support from the state. It has been written and now updated because of the deep concern felt that many decisions are currently being taken to cut services for disabled people without proper consideration of what the law requires. These include high-level budget-setting decisions which reduce the amount of money available to fund support, decisions to reduce eligibility or otherwise restrict access to services and decisions taken to reduce individual care packages. All of these decisions must be taken lawfully – and the courts will intervene if public bodies neglect their legal duties when reaching these decisions. That is why it is so important that everyone concerned with the rights of disabled people and their families to appropriate support understands what the law requires

[1] In this update the authors have sought to amend any outdated references and have considered some important recent judgments, including the Supreme Court judgments in *McDonald* and *KM*. The authors would be grateful if any errors or omissions could be brought to their attention by email at s.broach@doughtystreet.co.uk or kate.whittaker2@googlemail.com. Kate can also be contacted at Scott-Moncrieff & Associates, email kwhittaker@scomo.com.
[2] Available for free download from the Every Disabled Child Matters campaign website, at www.ncb.org.uk/edcm/Using_the_Law_to_Fight_Cuts.pdf

The following publications go into more detail about the law that relates to disabled people:

1) 'Community Care and the Law' (5th edition), by Luke Clements and Pauline Thompson, published by Legal Action Group ('LAG') in 2011, hard copies available from the LAG website (www.lag.org.uk) priced at £60

2) 'Disabled Children: A Legal Handbook' ('the Handbook'), by Steve Broach, Luke Clements and Janet Read, published by LAG and the Council for Disabled Children ('CDC') in October 2010, hard copies available from the LAG website priced at £40. Key chapters can be downloaded free of charge from the CDC website (www.ncb.org.uk/CDC)

3) 'Carers and their Rights: The law relating to carers' (4th edition), by Luke Clements, published by Carers UK in December 2010, hard copies available from the Carers UK website (www.carersuk.org) priced at £15, or can be downloaded free of charge.

4) 'Cemented to the Floor by the Law'[3], a paper by Steve Broach which gives more detailed coverage of the legal duties that may be used to fight cuts to disabled children's services, many of which apply equally to services for adults. Available to download free of charge at: http://www.councilfordisabledchildren.org.uk/resources/our-partners-resources/cemented-to-the-floor-by-law

Individuals and local groups are welcome to re-use extracts from this paper and are free to copy it and send it round by email. If extracts of the paper are used in other publications please state that the content was taken from this paper.

What do we mean by 'the law'?

Before understanding how the law can help protect the services that disabled people and those supporting them need, we need to be clear what we mean by 'the law'. In short, 'the law' is the rules governing what individuals and public bodies can or must do. Everyone, including government ministers and local councils, must act according to the law.[4] The law in relation to disabled people comes from a wide range of sources – including Acts of Parliament, rules and regulations made by ministers and international treaties like the UN Convention on the Rights of Persons with Disabilities (UN CRPD) and the UN Convention on the Rights of the Child (UN CRC). Importantly, because of the Human Rights Act 1998, all the rights found in the

[3] 'Cemented to the Floor by the Law' draws heavily from an earlier paper entitled 'Defending services for disabled children: using the law to fight the cuts', produced for the Community Care Law Reports Seminar in November 2010 and published at (2010) 13 CCLR 565. Some of the material in the current paper also comes from 'Defending services for disabled children'. The authors are grateful to Legal Action Group for permission to re-produce extracts from this paper.

[4] This is what is meant by 'the Rule of Law', a centrally important constitutional concept. This matters because all too often when public bodies ignore their legal obligations to disabled people it is treated as a minor breach of the rules, whereas actually it undermines the rule of law and is unconstitutional.

European Convention on Human Rights (ECHR) are now part of English law. This means, for example, that disabled people have a right to have their 'private life' and 'family life' respected by the state – including if necessary a right to be actively supported to make sure these rights are realised.[5]

As well as legislation[6] and international treaties, 'the law' is also found in statutory guidance. Guidance is 'statutory' if it is issued by a Minister who is permitted or required to issue the guidance by legislation. Statutory guidance has whatever force the legislation behind it says that it has – but generally public bodies[7] will have a duty to do whatever statutory guidance says they must do, unless they have a good reason not to do so.[8] Simply not having enough money to do what the guidance requires is unlikely to be a 'good reason' to depart from it.

No matter which of these sources the law comes from, a key question is whether a public body has a 'duty' or a 'power' to provide the service which an individual is seeking. Generally, there will be a duty where the law uses mandatory words such as 'must' and 'shall'. On the other hand, if the word 'may' is used, the public body will have a power to do whatever the law is describing. Put simply, a public body with a power can do something, a public body with a duty *must* do something.[9] However, even if there is only a power to do something, the public body must still consider properly whether the facts of an individual case require it to take the action requested and must take that decision rationally, reasonably and fairly.[10]

The powers and duties that matter most in relation to disabled people and others using care and support services from public bodies are discussed throughout this paper. Where there is a duty to do something or where a public body has decided to exercise a power, a disabled person or their family can meaningfully say that they

[5] These are the rights protected by Article 8 ECHR, see below.

[6] Acts of Parliament are 'primary' legislation. Rules and regulations made by ministers are 'secondary' legislation. Acts of Parliament are divided into 'sections' – so for example National Assistance Act 1948 s 21 ('section 21') is the duty to provide residential accommodation and support to adults needing 'care and attention' due to age, illness, disability or other reasons.

[7] This paper uses the term 'public body' to mean any organisation which has legal duties and powers which may affect disabled and other vulnerable people needing care and support. The most important of these will generally be local authorities (councils) and, at least for now, Primary Care Trusts (PCTs) – although PCTs are set to be abolished by the coalition government and replaced with clinical commissioning groups (CCGs), see the Health and Social Care Act 2012.

[8] The key legal judgment on the duty to follow statutory guidance is *R v Islington LBC ex p Rixon* (1998) 1 CCLR 119 at 123 J-K, as approved by the Court of Appeal in *R (TG) v Lambeth LBC* [2011] EWCA Civ 526. All the cases referenced in this paper can be accessed free of charge at the BAILII website – see www.bailii.org. BAILII can be searched by either the name of the case or (for recent cases) the 'neutral citation' – numbers and letters provided in the footnote reference starting 'EWHC' (High Court), 'EWCA' (Court of Appeal), 'UKHL' (House of Lords) and 'UKSC' (Supreme Court). Any other references after a case name are to a law report which can be found in legal libraries. For example, references to 'CCLR' are to the Community Care Law Reports.

[9] 'Powers need not be exercised but duties must be complied with'; See speech of Lord Nicholls in *R (G) v Barnet LBC* [2003] UKHL 57; [2004] 2 AC 208.

[10] These are some of the basic principles of 'public law' which govern all decisions made by public bodies, including those taken in relation to disabled people.

have a 'right' to the service – because the provision of the service will be required by the courts, as set out below.

How is the law enforced?

There is not much point focussing on the law in relation to disabled people unless there is a way for individuals and their families and carers to enforce their rights under the law. Fortunately, it is and will remain possible for individuals to enforce their rights in court in most areas affecting disabled people, including if unlawful decisions have been taken to cut services. Disabled adults may bring legal proceedings in their own right if they have the 'mental capacity'[11] to do so. If the person is a child or an adult who lacks the mental capacity to instruct a solicitor about legal proceedings, then the proceedings may be brought on their behalf by a 'litigation friend', typically a parent or other close family member.[12]

Judicial Review

The main way in which individuals can enforce their rights is through an application for 'judicial review' in the High Court.[13] 'Judicial review' is, as the name suggests, the process whereby a court reviews whether a public body has acted properly under the law. If a public body has failed to do what the law requires, for example has failed to assess a disabled person's need for care services, or has otherwise acted unfairly, irrationally or unreasonably, the judge can make an order requiring the body to act lawfully. Any failure to act in accordance with this order would be 'contempt of court' and would have serious consequences for the public body and its senior staff. In the vast majority of cases public bodies will do what they are ordered to do by the High Court – or may even agree to follow the guidance of the judge in a judgment so that an order is not required. Frequently public bodies reach an agreement with the individual to take the necessary steps before the case is even heard in court. Individuals and those helping them need specialist legal advice before starting any application for judicial review – see section headed 'How can individuals get legal advice and representation?' below.

In every case, including cases about actual or potential cuts to services, a formal 'letter before action' should be sent by solicitors to the public body inviting them to do

[11] The test of whether an individual lacks capacity comes from the Mental Capacity Act 2005 and always relates to the specific decision in question – here, whether the person understands what going to court means and is able to give instructions to their solicitor about decisions in the litigation.

[12] A non-family member may also act as litigation friend, for example an advocate who knows the person well. If there is no one suitable or willing to act as the litigation friend, then the Official Solicitor may be appointed to act as litigation friend, subject to his or her costs being covered: see www.officialsolicitor.gov.uk/os/civil_procs_children.htm.

[13] The High Court is one of the three 'senior courts' of England and Wales. No court which is lower than the High Court, for instance a Magistrate's Court or County Court, has the power to hear an application for judicial review. Appeals from the High Court go to the Court of Appeal and then finally (in the most important cases) to the Supreme Court, which has replaced the House of Lords as the highest court in the land. Cases where there is an alleged breach of a right protected by the ECHR can also be heard by the European Court of Human Rights in Strasbourg, but only once the domestic courts have finally dismissed the case.

whatever is needed before legal proceedings are issued.[14] If the public body replies confirming it will take the necessary actions then it should not be necessary to issue legal proceedings.

The standard amount of time a public body should be given to respond to a letter before action is 14 days but if the case is very urgent this can be shortened to 7 days, or even a shorter time if the situation is extremely urgent. Cases involving cuts to services may be very urgent, for example if a decision has been taken to close a particular service and there is no alternative provision in place so that individuals will miss out on support they need. However it is much better if the steps towards court proceedings, including sending the letter before action and then if necessary issuing the proceedings at court, can be taken as soon as possible once the concerns in question have been identified. Issuing proceedings promptly avoids the court having to suddenly deal with an issue in a very limited period of time. In some cases it also means the public body will be more likely to be able to reverse its decision if ordered to do so, before consequences have followed from it so as to make it too late to set the clock back. It is also essential that if at all possible judicial review proceedings are issued within three months of the decision under challenge, as this is the time limit – the court will only rarely agree to this time limit being extended and good reason will usually be needed for the delay.

In general terms applications for judicial review can only be brought where the problem is serious, ongoing and urgent. For less urgent, less important and/or old problems, individuals should instead make a formal complaint, if necessary to the relevant Ombudsman once the local authority complaints process has been exhausted.[15] However if the issue is an actual or proposed cut to a service which is important to a number of disabled or other vulnerable individuals then the High Court is likely to hear the case and make any orders it decides are needed. Disabled people and others affected by decisions of public bodies should take legal advice as soon as possible to help decide whether a case is suitable for judicial review.

If a case is urgent and important enough for a judicial review application to be made, the next issue is funding. Most individuals will need 'legal aid' to bring a judicial review challenge, as the costs of losing a case in the High Court will usually run to tens of thousands of pounds, possibly including the legal costs of the public body which has defended the case successfully, as well as the costs of the legal team the individual uses to bring the case. Individuals with legal aid who lose a case will generally pay either nothing or an affordable 'contribution', which is set by the Legal Services Commission when the person first applies for legal aid, based on an

[14] This is specifically required by the 'Pre-Action Protocol' which governs judicial review, see www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_jrv. Failure to comply with the Pre-Action Protocol is likely to mean that the High Court will refuse to hear the case, no matter how strong its merits.

[15] The Local Government Ombudsman (LGO) for councils; the Parliamentary and Health Service Ombudsman (PHSO) for health bodies. Details of how to make a complaint are on the relevant websites: www.lgo.org.uk/making-a-complaint (LGO) and www.ombudsman.org.uk/make-a-complaint/how-to-complain (PHSO).

assessment of their financial position.[16] The great majority of individuals who receive legal aid for judicial review do not pay anything for it, win or lose, because their means are considered to be too low.[17]

For judicial review challenges involving disabled children, it is generally the financial means of the child not the parent that are taken into account. So unless the child has significant money in his or her own name (for example a trust fund) it is likely that legal aid will be available. It is important to note however that unless parents are eligible in their own right there may be initial costs prior to proceedings being issued which will need to be discussed with solicitors.[18]

Importantly, despite the severe reduction in the legal aid scheme brought into effect by the Legal Aid, Sentencing and Punishment of Offenders Act 2012, all judicial review challenges remain eligible for legal aid subject to means assessment. Limited legal aid is also available for special educational needs appeals to the Tribunal. Solicitors with legal aid contracts will be able to advise individuals on whether their issues remain 'within scope' for public funding, but this is unlikely to be a problem for all social care and health decisions and most education decisions.

How can individuals get legal advice and representation?

Individuals who are concerned that their legal rights are not being respected in decisions being taken about cuts to services need to seek specialist advice as soon as possible. Advice in relation to individual cases can come from a number of sources, including helplines such as those run by Disability Rights UK, the National Autistic Society, Mencap, Age UK, Scope, Contact a Family or Carers UK, or from local disability advice and advocacy organisations such as those in the DIAL UK network (around 100 organisations nationally), the Action for Advocacy network (around 300 organisations nationally), local user-led disability organisations[19] such as centres for independent living (CILs), carers' centres and parent-carer groups. The organisations Action For Advocacy (a4a) and the Advocacy Resource Exchange (ARX) both have online databases of hundreds of advocacy services around the country as well as an Advocacy Finder telephone helpline.[20] Some of these

[16] Where the proceedings have been brought on behalf of a child or a person lacking capacity through a litigation friend (see above about the role of the litigation friend) then there is a risk, albeit very slight, that the court may award costs against the litigation friend if the claim fails – even if the individual has legal aid. Families or others concerned about this should seek guidance from their solicitors.

[17] All individuals who can show that they receive income support, income-based Employment and Support Allowance or guarantee state pension credit are automatically eligible for legal aid without a financial contribution, provided they satisfy other criteria including the merits of the case.

[18] This is because even if a disabled child may be eligible for legal aid it may still be their parents' means who are assessed under 'Legal Help' for the initial advice stage.

[19] 'User-led organisations' (ULOs) – organisations led and controlled by disabled people, other people who use services, and carers – now exist in many areas and often provide advice and advocacy support along with other services such as support with managing direct payments. The government has accepted a recommendation that there should be a ULO in every local authority area, and the National Centre for Independent Living (now part of Disability Rights UK) and other bodies are working to support the development of local ULOs to further this aim.

[20] www.actionforadvocacy.org.uk; www.advocacyresource.org.uk; 08451 22 86 33

organisations will also be able to offer advice and support in relation to legal challenges to wider decisions.

However if a group of individuals or a local organisation is seriously considering a challenge to a consultation or a decision to cut services, specialist legal advice will be required – at the earliest possible time.

There are a number of firms of solicitors who specialise in helping disabled and other individuals who use care and support services. These solicitors will have contracts to provide advice and representation through the Legal Aid scheme. This means that their services to some individuals will be provided free of charge. Individuals should be sure to check at the outset what the funding arrangements are with any solicitor, including the costs that will become necessary at different stages and when they will need to be paid. It is also essential to check that the solicitor is experienced in the relevant area – individuals seeking advice should not feel embarrassed to ask this essential question.

At the end of this paper is a list of solicitors who are known to specialise in work relating to disabled people and others using care and support services and are interested in helping with cases involving cuts to services.[21] The Community Legal Service Website has a 'find a solicitor' option and allows search by name, category, geographical area, postcode etc.[22] Relevant categories to search will include 'Public Law', 'Community Care' and 'Education'. However it is always important to check with a solicitor how much experience they have in a relevant area and not rely solely on directories.

Care and support for disabled people whose needs arise from a negligently caused injury

This paper focuses particularly on the steps that individuals and groups can take to obtain and protect the services they are entitled to from public bodies. However, for some individuals there may be an alternative legal route to obtaining the care and support they need, if their needs arise from an injury which there is reason to suppose was caused by the negligent acts or failures of another person (including a public official such as a doctor). In this situation, the individual may be able to bring a claim of negligence causing personal injury, and obtain a court order that the person responsible should pay compensation for the effects of the negligence. The law states that the compensation should seek to fully address all the consequences that flow from the injury, so for example if a child is born with severe disabilities as a result of negligent treatment during the delivery, then the responsible body (in this case the hospital trust where they were treated) must pay for all the costs associated with those disabilities that would not have arisen if it were not for the negligence. This includes the cost of all the care, support, therapies, adaptations to the home

[21] Any solicitor who wishes to be included on this list for future versions of this paper should email s.broach@doughtystreet.co.uk or kate.whittaker2@googlemail.com with details of their firm and their experience in community care cases and other relevant work.
[22] www.communitylegaladvice.org.uk/en/directory/directorysearch.jsp

and other needs that the child will have through their lifetime. If a disabled person is able to bring a successful claim, then they are entitled to have compensation to meet all their future needs to a high standard, so that they do not need to rely on statutory services at all.

In cases of clinical negligence, detailed investigations may be needed, with expert evidence, in order to establish exactly what happened and whether the injuries were indeed caused by treatment that was legally 'negligent'. Legal aid may be available to cover the costs of these investigations, or individuals may be able to enter into a 'no win no fee' arrangement with solicitors. There are many solicitors who deal with different kinds of personal injury cases, including a number who specialise in complex clinical negligence cases such as birth injuries. However the recent reforms to legal aid will make it harder to obtain public funding for such claims; solicitors specialising in this area will be able to advise on alternative funding options.

So what legal rights do disabled people have?

The short answer is – more than many would think, and more than many public bodies realise. The following is a short summary of some of the key legal rights for disabled people, and their carers, that may affect decisions to cut services:

1) **A right to participation**. Disabled people <u>always</u> have a right to properly participate in decisions made about them. This right is found in international treaties[23] and also very often in legislation.[24] It is a fundamental principle of the Mental Capacity Act 2005, and has also been reiterated by the High Court, that even if a disabled adult or child has very severe communication impairments it is still necessary to take every possible step to find out what they want and if possible to act in accordance with those wishes and feelings.[25] This means that any decision by a public body which will or may result in a reduction in services to one or more disabled person must involve the person or people in this decision and pay proper regard to their views. Moreover, in the case of a proposal to cut a service for a disabled child or an adult with a mental disability, a lawful decision to do so will need to show proper consideration to the wishes, feelings and views of all those close to the

[23] Article 8 ECHR; Article 12 UN CRC; UN CRPD Article 3(c) (principle of 'full and effective participation and inclusion in society') and Article 4(3) (obligation on governments to 'closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations' in all decision-making processes concerning issues relating to persons with disabilities).

[24] For example the Community Care Assessment Directions 2004 provide that when undertaking a community care assessment, social services must take all reasonable steps to reach agreement with the person and, where appropriate, their carers, on the services they are considering providing to meet their needs; the DoH policy guidance *Community Care in the Next Decade and Beyond* (HMSO, 1990) provides that community care assessments and care plans must take account of the disabled person's and carers' own preferences and that they 'must feel that the process is aimed at meeting their wishes'. Similarly, Children Act 1989 s 17(4A) requires due regard be given to the wishes and feelings of disabled children before any decision is taken about services to be provided for them under the Children Act 1989.

[25] *R (CD) v Anglesey CC* [2004] EWHC 1635 (Admin).

individual, including as appropriate parents, siblings, grandparents, extended family and close friends. See below for the right to have decisions taken in the 'best interests' of children and those lacking mental capacity, where 'best interests' includes respect for their individual wishes and feelings, not just imposition of an objective notion of best interests.

2) **A right to be assessed**. Many disabled people and their families understandably feel that they are 'over-assessed' – but assessment is at the heart of the duty to provide support. At its most basic, assessments are required for a public body to decide whether it is necessary to take a certain step to support an individual or family, which is usually the test for whether there is a duty to take that step.[26] There are also very important specific assessment duties in relation to carers' needs,[27] children's services[28] and statements of special educational needs.[29] Importantly, the law is clear that services should not be withdrawn from disabled people (children and adults) who are receiving them without a full re-assessment of their needs.[30] This is true even if the cuts are happening because 'eligibility criteria' are changing – as it will be necessary to determine whether the child meets the new criteria following a full and up-to-date assessment.

3) **A right to services to meet their assessed needs**. Once an assessment has been completed, the public body must then decide whether it has to take

[26] In relation to adults, s 47 NHS and Community Care Act 1990 requires local authorities to carry out an assessment where there is an 'appearance of need'. Social services must follow detailed guidance, the main source of which in England is the so-called FACS Guidance *Prioritising need in the context of Putting People First* (2010 - formerly known as the *Fair Access to Care Services (FACS) Guidance*; the key guidance in Wales is the *Unified and Fair System for Assessing and Managing Care (UFSAMC) 2002*. Plus there is much other guidance specific to certain user groups, eg older people: the *Single Assessment Process* guidance; mental health service users: the *Care Programme Approach* (2008); people with learning disabilities: the *Valuing People* guidance (2001).

[27] The Carers (Recognition & Services) Act 1995 introduced the right to a 'carer's assessment' for a carer who provides a substantial amount of care on a regular basis – even if the person for whom they care is not eligible for services. The Carers (Equal Opportunities) Act 2004 added a statutory obligation on social services to inform carers of their rights and a requirement that carers' assessments consider whether the carer works or wishes to work and/or is undertaking, or wishes to undertake, education, training or any leisure activity.

[28] Children Act 1989 s 17 and Paras 1 and 3 of Schedule 2. These assessments must comply with the statutory guidance entitled *'Framework for the Assessment of Children in Need and their Families*', published by the Department of Health in 2000 ('the Assessment Framework'), although the government is currently consulting on a more streamlined version of this guidance with less rigorous requirements. The current guidance states that 'initial assessments' must be completed within 7 working days and 'core assessments' (involving more than one agency, often health) must be completed within 35 working days. Any failure to comply with what the Assessment Framework says must happen can be remedied by the High Court, with a local authority being ordered to carry out its duties according to the guidance.

[29] Education Act 1996 s 323 – a local authority must carry out a 'statutory assessment' if there is evidence that, despite the school having done everything it can to help, a child is not making progress and so additional support may be required from the local authority. A refusal by a local authority to carry out a statutory assessment can be appealed to the Tribunal – with most such appeals being conceded by the local authority without a hearing.

[30] This principle has been established in a number of cases, most notably *R v Gloucestershire CC ex p Mahfood* (1997) 1 CCLR 7.

the next step – for instance to provide care services within a person's home, or in the case of children, to provide a short break, or to make and maintain a statement of special educational needs. For each of these decisions there is a legal test that must be applied before deciding whether the next step should be taken. For example:

In relation to adult social care,[31] there will be a right to have a particular need met if that need is determined as 'eligible' through application of eligibility criteria, used by local authorities to target services to those in the greatest need. All local authorities' eligibility criteria must follow a national eligibility framework, according to which an individual's needs are categorised as to the level of risk associated with each need if it is not met.[32] The guidance sets four bands of risk – 'low', 'moderate', 'substantial' or 'critical' – and describes the level of impact on different aspects of independence and well-being that corresponds with each band. For example an individual might be assessed as having a critical need for support to enable them to access work or education, if without that support they would be unable to sustain 'vital involvement' in work or education. Or a person might have a 'moderate' need in relation to personal care or domestic routines, if without support to meet the need they would be unable to carry out several personal care or domestic routines.[33] Each local authority then sets its own threshold for the risk banding at which eligibility is triggered. The majority of local authorities currently set the threshold at 'substantial', so a person will be eligible to have their needs met if they would be at a 'substantial' or 'critical' risk if the need was not met. If their needs are classed as 'low' or 'moderate' then the local authority is not obliged to meet them, although councils are encouraged to do so in order to prevent low-level needs escalating into more serious ones. This approach was recently confirmed as lawful by the Supreme Court in *R (KM) v Cambridgshire CC* [2012] UKSC 23.

In relation to children's services (for example short breaks), there will be a right to the service if the local authority thinks that it is necessary to meet a child's needs[34]. Moreover a local authority must put in place a 'realistic plan of

[31] See Clements and Thompson, *Community Care and the Law* (5th ed) for detailed coverage of all the adult social care powers and duties.

[32] The national eligibility framework for England is set out in the FACS Guidance (*Prioritising need...* as above) and for Wales in the UFSAMC Guidance.

[33] Some of the risks to independence and well-being classed as critical involve life-threatening circumstances or serious safeguarding concerns, but other than these there is no hierarchy of needs, so needs relating to social inclusion and participation, family roles and responsibilities, work and education should be seen as just as important as needs relating to personal care. Councils should make decisions in the context of a human rights approach, considering people's needs not just in terms of physical functionality but in terms of a universal right to dignity and respect. See here *R (JM) v Isle of Wight Council* [2011] EWHC 2911 (Admin); (2012) 15 CCLR 167, where a local authority's decision to only meet 'substantial' needs relating to the person's safety and ability to remain in their home was held to be unlawful.

[34] Chronically Sick and Disabled Persons Act (CSDPA) 1970 s 2. Assessments of children under the CSDPA 1970 should be carried out as part of a Children Act assessment; see Children Act 1989 Schedule 2, Para 3 and *R (MS) v Oldham BC* [2010] EWHC 802 (Admin) at [10]. This means that

action (including services to be provided)'[35] to show how the needs of disabled children will be met. Local authorities are allowed to use 'eligibility criteria' to help them decide which children are eligible for services, but once a child is eligible he or she must get all the support the authority has assessed them as needing. Also, eligibility criteria must not:

- Be used in place of an assessment – they can only be used to decide if a child is eligible for services after an assessment;[36]
- Impose a fixed cap or maximum amount of support a child can receive once found eligible; and / or
- Limit the amount of support an individual child receives to less than is sufficient to meet their assessed needs.[37]

In education, if a statutory assessment shows that a child has significant needs which cannot be met by the school alone, then the local authority must make and maintain a statement[38] and the child then has a right to the educational provision set out in the statement.[39] This right is absolute; it does not matter whether the local authority has spent its education budget or if there is a shortage of staff, the authority simply has to arrange the provision.

In relation to carers, eligibility criteria are applied to the needs identified from the carer's assessment, according to a similar banding of risk as with disabled adults' assessments: in this case the risks being considered are to 'the degree to which a carer's ability to sustain [the caring role] is compromised or threatened either in the present or in the foreseeable future by the absence of appropriate support'. [40] However unlike with the determination of eligibility as to the needs of a disabled person themselves, when a carer's needs are categorised as 'critical' (say), the local authority still has discretion whether or not to meet them, as there is only a power, rather than a duty, to provide services.[41]

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authorities should make their service provision decision under both the CSDPA 1970 and the Children Act 1989 following a single assessment.

[35] '*Framework for the Assessment of Children in Need and their Families*', para 4.1.

[36] *R (JL) v Islington LBC* [2009] EWHC 458 (Admin).

[37] What eligibility criteria can lawfully do is limit the number of children eligible for support, for example saying only those children with a certain level of need get support. Once a child crosses that threshold however they are entitled to all the support they have been assessed as needing.

[38] Education Act 1996 s 324.

[39] The duty to arrange the educational provision set out in Part 3 of a statement comes from Education Act 1996 s 324(5)(a)(i). In *R (N) v North Tyneside Borough Council* [2010] EWCA Civ 135, the Court of Appeal said that there is 'no best endeavours defence' to a challenge that a local authority is failing to arrange the provision specified in a statement – in other words that the local authority cannot say 'we are trying our best', it simply has to do whatever the statement says and will be ordered to do so by the Court if it does not.

[40] *Prioritising Need...* (2010), para.99, and Practice Guidance to the Carers and Disabled Children Act (CDCA) 2000.

[41] CDCA 2000 created a power (s 2) for local authorities to provide support services to carers, and to make these services available by way of direct payments and 'vouchers'. Guidance to the Carers Acts suggests that examples of services could be a short holiday for a carer to have time to themselves, driving lessons, taxi fares to maximise a carer's time, training, laundry or help with housework.

In relation to health, although the law is less clear than for social services, there will almost certainly be a duty for health bodies to ensure that assessed health needs of disabled people are met unless these needs are minor or trivial. Health bodies must in particular comply with the *National Framework for NHS funded Nursing Care in England*[42], which requires them to take a decision as to whether a disabled person has a 'primary' health needs, in which case the NHS will be responsible for meeting all their health and care needs.[43]

4) **A right not to have services taken away**. Generally, and as noted above, the only way in which a public body can lawfully stop providing a service to a disabled person is if a re-assessment is carried out which shows that the person's needs have lessened or gone away. The only other way in which a public body may be able to withdraw services to an individual lawfully is if it has raised its eligibility criteria so the individual is no longer eligible[44] – but even then there should be a re-assessment and a range of other legal issues will need to be taken into account before services can lawfully be withdrawn.[45]

General legal duties that can help in fighting cuts

So far this paper has focused on the key legal duties in relation to individual disabled people. However, in a time of massive cuts to services it is important for individuals and those supporting to understand how the law can help people to work together to protect services. Again, any groups who are thinking about collective legal action should consult a specialist solicitor as soon as possible. In our view there are four key duties that may particularly assist in such challenges:

- The duty, if consulting on a proposed change to a service, to do it properly;
- The duty to respect disabled people's human rights, particularly their right to family and private life;[46]
- The public sector equality duty;[47] and
- The duty to act in the best interests of disabled people who lack capacity[48] and to ensure that children's best interests are a 'primary consideration' in decisions affecting them[49]

[42] In Wales, the equivalent guidance is set out in Welsh Assembly Circular 018/2010

[43] See Clements and Thompson, *Community Care and the Law* (5th ed), Chapter 14 for more on health care duties.

[44] In adult care this would mean the authority raising its criteria from (for example) 'moderate' to 'substantial', so that only individuals with more serious needs are eligible. These bands come from the 'Prioritising Need' / FACS guidance for adult services as set out above (the UFSAMC guidance in Wales). There is no equivalent to this guidance for children's services – but it is likely that children's services would be allowed by the courts to take a similar approach.

[45] For example, whether the withdrawal of services is 'proportionate' under Article 8 ECHR (meaning amongst other things that it strikes a 'fair balance' between the interests of the individual and the need to spend public money fairly) and whether there has been due regard to the need to promote equality of opportunity between disabled people and others (Equality Act 2010 s 149, which replaced the Disability Discrimination Act 1995 s 49A from 1 April 2011).

[46] Article 8 ECHR;

[47] Equality Act 2010 s 149

Consultation

The first and most important point to understand on consultation is that whether or not there is a duty to consult, once a public body decides to consult it has to do so properly.[50] In other words, whether consultation is a duty or a choice, once launched the standard and quality of the consultation has to be the same.

Secondly, even if there is no specific duty to consult on a particular issue, disabled people's organisations, parents' forums and other local groups may well have a 'legitimate expectation' that there will be consultation about changes to important services. If any local group becomes aware of a significant change to services which has taken place in their area without consultation they may wish to take legal advice as quickly as possible. See the recent *Building Schools for the Future* case[51] for a failure to consult at all amounting to an 'abuse of power'. This case is also important in relation to the public sector equality duty, see below.

Once consultation is begun, the courts[52] have specified that four things must be in place to make it lawful:

1) Public bodies must consult in good time – so that responses to the consultation can still genuinely be taken into account before the final decision is made;
2) There must be enough information so that people responding to the consultation understand the proposals and can make an informed response;
3) There must be enough time for responses. Whether 'enough' time has been given will be judged by the court (if the consultation is challenged) on the facts of the individual case. However a very short consultation over a school holiday period is unlikely to be 'enough' time;
4) There must be genuine consideration of the responses – not just 'lip service' paid to them.

If a particular consultation does not match up to these requirements, any individual potentially affected by the proposed changes can bring an application for judicial review in the High Court to challenge the consultation. If the court agrees that the consultation is unlawful then the court will 'quash' the consultation and in effect make the public body start again – and do it properly the next time. Doing it properly may involve considering whether other potentially less detrimental alternatives are available – for example, increasing council tax for everyone rather than removing services from vulnerable groups.

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[48] Mental Capacity Act 2005 s 1
[49] Article 3 UN CRC
[50] See the most important case on consultation duties, '*Coughlan'*; *R v North and East Devon Health Authority ex p Coughlan* [2001] QB 213.
[51] *R (Luton BC and others) v Secretary of State for Education* [2011] EWHC 217 (Admin) at [96]
[52] The consultation duties established by the High Court in *Coughlan* stem from the 'common law', that is the body of English law which emerges from court judgments over time and is not found in legislation. An example of a common law duty is that there is always a duty on public authorities to act fairly and treat like cases in the same way.

The consultation duties are therefore very important, but may only delay the inevitable – because a public body which wants to cut disabled people's services can still reach this decision after a proper consultation. However in the successful challenge to Birmingham's decision to move to 'critical only' adult social care (discussed in detail in relation to the public sector equality duty), the local authority's consultation was held to be unlawful and it did not seek to re-consult on the same proposals. This shows that consultation challenges can have important long-term consequences.

Human Rights

Disabled people have a wide range of human rights which are protected by domestic and international law.[53] The most important of these in the context of cuts to services is the right to respect for private and family life under Article 8 ECHR. Article 8 requires respect for two distinct but linked rights, the right to family life and the right to private life. The right to family life is simpler to understand (respect for all types of families is required), but the right to private life is particularly important for disabled people. Private life includes a person's ability to function socially[54] and a person's 'physical and psychological integrity'.[55] In effect, this means that disabled people may have a right under Article 8 to services and support to enable their personalities to develop and for them to function socially. Public bodies must remember that the ECHR, including Article 8, is intended to guarantee rights which are 'practical and effective' not 'theoretical or illusory'.[56]

Article 8 requires the state not to 'interfere' with a person's right to respect for family and private life unless that interference is 'in accordance with the law' and 'necessary in a democratic society', which means proportionate (see below). It is obviously the case that a decision to cut or withdraw services is an 'interference' with a disabled person's Article 8 rights (most likely both the family life and private life aspects). For this 'interference' not to breach Article 8 it must therefore meet these two requirements.[57] To reiterate, any cut to a service to disabled people will breach Article 8 ECHR unless it is (i) in accordance with the law and (ii) proportionate.

[53] The rights under the European Convention on Human Rights are part of English law because of the Human Rights Act 1998; section 6 of the HRA 1998 makes it unlawful for a public body (including a court) to act incompatibly with a person's ECHR rights. Other international treaties and conventions, notably the UN Convention on the Rights of the Child and the UN Convention on the Rights of Persons with Disabilities, are also binding on the state and the rights they contain can generally be enforced in court through the ECHR, particularly Article 8.
[54] *R (Razgar) v Home Secretary* [2004] 2 AC 368, speech of Lord Bingham at [9])
[55] *Pretty v UK* (2002) 35 EHRR 1
[56] See for example *Airey v Ireland* (1979) 2 EHRR 305 at [24].
[57] This is what is meant by Article 8 being a 'qualified' right. No-one has an 'absolute' right to respect for their private and family life but everyone has the right for such respect to be shown unless the specific requirements of Article 8 is met. Other rights under the ECHR (for instance the right to life and the right to freedom from torture and inhuman or degrading treatment under Articles 2 and 3) are 'absolute'.

For the purposes of Article 8, the 'law' includes not just legislation but (for example) statutory guidance.[58] This means that a breach of (for example) the *Prioritising Need* guidance is likely to result in an unlawful interference with a person's Article 8 ECHR rights.

Even if all the relevant 'law' has been complied with, the final test under Article 8 ECHR is whether the decision is proportionate ('necessary in a democratic society'). The key judgment here is the speech of Lord Bingham in an immigration case, *Huang v Home Secretary*.[59] Lord Bingham emphasised that for a decision to be proportionate it must be no more than necessary to accomplish the objective. So in the context of cuts, if other less drastic steps could be taken to achieve the necessary savings then the decision cannot be proportionate and therefore it breaches Article 8 ECHR. Further, Lord Bingham added that the 'overriding requirement' of proportionality was 'the need to balance the interests of society with those of individuals and groups'. The ultimate question is therefore whether the wider economic interest justifies the decision to withdraw or reduce services to particular vulnerable people. It should also be noted that the court will have to decide for itself if the decision under challenge is proportionate, not simply review whether the decision was rational and reasonable and took human rights into account.[60]

What about a situation where a disabled adult or child is not yet receiving services, or are not receiving the services they or their family consider to be necessary? There may then be a 'positive' obligation under Article 8 for a public body to show respect for the person's right to family and/or private life through providing services. Positive action may be required under Article 8 in order to 'enable family life to continue'[61] or to 'compensate' for restrictions experienced by disabled people.[62] In particular, Article 8 may positively require a service to be provided in order to ensure respect for a disabled person's human dignity, which is the 'very essence of the Convention'[63]. So ensuring a disabled individual can realise their human potential and live a life with dignity may require a public body to act as well as to not act. Any cuts which will make it impossible for a public body to act in this way would be highly likely to breach Article 8 – although proving this in advance may well be difficult.

The nature of the duties on local authorities under Article 8 in the care context was considered by the Supreme Court in *R (McDonald) v Kensington and Chelsea* [2011] UKSC 33, a case involving a former ballerina who challenged a decision to remove her night-time care and provide her instead with incontinence pads, although she is not in fact incontinent. The majority of the Supreme Court found that this decision was not unlawful because there was no interference with Mrs McDonald's Article 8 rights and if there was an interference it was necessary and proportionate. This case demonstrates that the Courts will be slow to find a breach of a person's human rights

[58] See for example *Liberty v United Kingdom* (2009) 48 EHRR 1 at [60].
[59] [2007] 2 AC 167 at [19].
[60] See speech of Lady Hale at [31] and [37] in *Belfast City Council v Miss Behavin' Ltd* [2007] UKHL 19; [2007] 1 WLR 1420
[61] *Anufrijeva v Southwark LBC* [2004] QB 1124, judgment of Lord Woolf at [43]
[62] *Price v UK* (2002) 34 EHRR 1285, judgment of Judge Greve.
[63] *Pretty v UK* at [65].

from a change in the way that support is provided, rather than simply withdrawing support. Although the *McDonald* judgment has been strongly criticised from a disability rights perspective,[64] it is important to note that the majority did agree that Article 8 can impose positive obligations to provide community care services in certain circumstances.[65]

Bringing a challenge under Article 8 ECHR requires a person to be an actual or potential 'victim' of a violation of their rights.[66] This is not supposed to be a high hurdle and any individual who is or may be directly affected by cuts would be able to bring such a case.

Public Sector Equality Duty

The public sector equality duty is a duty on public bodies to have 'due regard' to a number of specified needs, including the need to promote equality of opportunity for disabled people.[67] The duty applies to all decisions by public bodies, including those in relation to individual cases.[68] So when (for example) a local authority is deciding what level of service it should provide to an individual it must consider the need to promote that person's equality of opportunity compared with other people.

However, perhaps an even more important aspect of the disability equality duty is that it applies when high-level decisions are taken about the nature and shape of services. In discussions about the future of services that matter to disabled people (whether universal or specialist services), public bodies need to be able to show that they have had the disability dimension of the public sector equality duty in mind at all relevant times. If they cannot, it is likely that (if challenged) the High Court will quash any decision taken and require it to be taken again with due regard to the duty. Very important recent examples of social care policy decisions which were quashed by the Courts because (in part) of a failure to comply with the public sector equality duties include the successful challenges to proposed new restrictive eligibility policies for adult social care introduced by both Birmingham[69] and the Isle of Wight.[70]

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[64] See for example Clements and Thompson, *Community Care and the Law* (5th ed) at 4.110-4.113

[65] See here judgment of Lord Brown at [15]; 'There is no dispute that in principle [Article 8] can impose a positive obligation on a state to take measures to provide support and no dispute either that the provision of home-based community care falls within the scope of the article provided the applicant can establish both (i) "a direct and immediate link between the measures sought by an applicant and the latter's private life" (Botta v Italy (1998) 26 EHRR 241 , paras 34 and 35) and (ii) "a special link between the situation complained of and the particular needs of [the applicant's] private life" (Sentges v The Netherlands (2003) 7 CCL Rep 400 , 405).

[66] Human Rights Act 1998 s 7

[67] On 5th April 2011, the single equality duty in Equality Act 2010 s 149 replaced the former disability equality duty in Disability Discrimination Act 1995 s 49A. Although the Equality Act duty applies to all 'protected characteristics' (age, gender, race etc) it is very similar to the previous disability equality duty.

[68] See *R (JL) v Islington LBC*, as above, and more recently *Pieretti v Enfield* [2010] EWCA Civ 1104.

[69] *R (W) v Birmingham City Council* (2011) EWHC 1147 (Admin), in which the court held that the council had breached the disability equality duty when setting its budget and altering its eligibility policy to meet critical needs only. The judge stated that the council had failed to ask itself the right questions, including 'whether the impact on the disabled of the move to critical only was so serious that an alternative which was not so draconian should be identified and funded to the extent

It is important to understand that the disability equality duty does not require the public body to achieve equality of opportunity for disabled people – just to think carefully about this need when reaching its decisions. A public body which is proposing a substantial cut to disabled people's services will need to be able to show how it has had 'due regard' to the duty – for example if it is proposing to do something different which should benefit disabled people alongside the cuts, to mitigate their effect.

An important issue is when precisely in a decision-making process must a public body have regard to the disability equality duty? The *Building Schools for the Future*[71] and *Southall Black Sisters*[72] cases show that the duty must be considered when proposals are drawn up; it is unlikely to be good enough for a public body to commit to doing a disability equality assessment after a consultation – even if before the actual decision is taken. However this contrasts with the judgment in a recent judicial review of Lancashire County Council's decision to cut its budget for adult social care services. The judge held that although the council had taken a preliminary decision about its budget before carrying out a full impact assessment, this was lawful because it had kept an open mind about the implementation of specific policies within the budget framework, so that it could still have some flexibility about how to minimise and mitigate the effects of the cuts on disabled people in light of the subsequent impact assessment.[73]

Best Interests

Public bodies are required, for different legal reasons, to respect the best interests of disabled children and disabled adults who lack capacity to make the relevant decision.

In relation to disabled people aged 16 or over, section 1 of the Mental Capacity Act 2005 states that 'an act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests'.

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necessary by savings elsewhere'. Councillors were not given the right information to answer the relevant questions and essential information on the plans was either unclear or only provided at a very late stage. The council was forced to re-run the consultation and make fresh decisions on adult social care.

[70] *R (JM) v Isle of Wight Council* [2011] EWHC 2911 (Admin); (2012) 15 CCLR 167. The local authority's eligibility criteria in this case were also quashed because they unlawfully split up the 'substantial' risk band into eligible and ineligible needs, see above.

[71] *R (Luton BC and others) v Secretary of State for Education* [2011] EWHC 217 (Admin)

[72] *R (Kaur and another) v Ealing London Borough Council* [2008] EWHC 2062 (Admin). This case involved a breach of the race equality duty in relation to the withdrawal of funding to Southall Black Sisters but the principles are directly applicable to the disability equality duty.

[73] See *R (JG and MB) v Lancashire County Council* [2011] EWHC 2295 (Admin). This illustrates the fact that courts remain reluctant to interfere with difficult social or economic decisions made by elected officials, as long as there has been proper consideration of the relevant factors, despite other recent cases such as the Birmingham case (see above) where decisions with important economic consequences have been struck down by the Courts.

The Mental Capacity Act Code of Practice considers the best interests principle in section 1(5) at 2.12: 'The principle of acting or making a decision in the best interests of a person who lacks capacity to make the decision in question is a well-established principle in the common law. This principle is now set out in the Act, so that **a person's best interests must be the basis for all decisions made and actions carried out on their behalf in situations where they lack capacity to make those particular decisions for themselves.** The only exceptions to this are around research (see chapter 11) and advance decisions to refuse treatment (see chapter 9) where other safeguards apply' (emphasis added).

In *R (W) v Croydon LBC* [2011] EWHC 696 (Admin) the Court held that a placement decision for a disabled young man was unlawful as a result of insufficient consultation with his parents. At [11], the judge held that 'The Mental Capacity Act 2005 is of particular importance in view of SW's lack of capacity. Section 1(5) provides that an act done, or decision made under this Act for or on behalf of a person who lacks capacity, must be done or made in his best interests. Section 4 deals with how best interests are to be determined. The person making the determination, and here that is the local authority, must consider the matters provided for in section 4(6) and (7)…'. The judge went on to hold (at [18]) that in that case a best interests meeting 'needed to occur' and had not occurred before the placement decision was made and that the decision was thereby unlawful.

All of this means that where cuts decisions will have a very significant impact on a disabled person who lacks capacity in a relevant respect, for example a decision to close a day centre attended by people who are unable to choose for themselves to spend their time elsewhere, then it may be that the local authority will have to consider whether this decision is in the service user's best interests before it is put into effect. In this respect the best interests duty under the Mental Capacity Act 2005 links closely to the duties imposed by Article 8 ECHR which are discussed above.

In relation to disabled children, one of the central obligations under the UN Convention on the Rights of the Child is that in decisions affecting children their best interests[74] should be a 'primary consideration'.[75] This requirement has recently been considered by the Supreme Court in *ZH (Tanzania)*, a case involving the potential deportation of a mother to Tanzania when her children were British citizens.[76] Baroness Hale stated that while all other considerations could outweigh a child's best interests, 'the important thing…is to consider those best interests first'.[77]

In the context of cuts to disabled children's services, the 'best interests' duty requires the wishes and feelings of children and the impact of the decision upon them to have been the first consideration in the minds of the decision-makers. Any decision to cut

[74] 'Best interests' broadly means the well-being of a child; *ZH (Tanzania)* [2011] UKSC 4, speech of Baroness Hale at [29].
[75] UN CRC Article 3
[76] [2011] UKSC 4
[77] Judgment at [26]

services without children's best interests being a primary consideration is therefore potentially unlawful, for example under Article 8 ECHR or section 11 of the Children Act 2004 (see below). The requirement to act in children's best interests could be enforced in the courts by the child, their parent or another person close to the child.

Disabled children are, of course, children first – and so the duties in the Children Acts apply to them equally as to other children. One important duty was created by the Children Act 2004 and requires public bodies to have regard to the need to safeguard and promote the welfare of children in carrying out their functions.[78] The way this duty works is very similar to the disability equality duty. Public bodies are not required to actually safeguard and promote children's welfare under this duty[79] but they must consider this issue when reaching their decisions. So if (for example) a local authority is proposing to close a children's centre[80] where disabled children receive short breaks, they will need to think about not only how this will impact on disabled children's equality of opportunity but also whether it might fail to safeguard and promote their wider welfare. Again, any decision to cut or withdraw a valued service which does not see an alternative service put in place may be open to challenge under this duty – and the route to do so would be an application for judicial review.

Conclusion

This paper has sketched out some of the key legal rights for disabled people and those supporting them, and has then looked at some of the general duties which may prevent services being cut or withdrawn. Underpinning all of this is a requirement under domestic law[81] and international law[82] that disabled people should be supported to live 'ordinary lives'. This is what the law requires. Working together, disabled people, families, carers, local groups and their lawyers and advisors have the legal tools to make this happen and ensure that even in a time of intense pressure on public finances the legal rights of disabled people are respected.

Steve can be contacted at s.broach@doughtystreet.co.uk and is particularly keen to be made aware of any new legal cases in relation to disabled people (children and adults) and their families, including those which settle before final hearing. Steve is available to assist with challenges to cuts but can only do so when instructed by a solicitor under the Bar Council's rules.

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[78] Section 11(2). A case where this duty was considered in relation to a disabled child, although not in great detail, is *R (B) v Barnet LBC* [2009] EWHC 2842 (Admin), (2009) 12 CCLR 679

[79] However they are required to in relation to individual children under other duties, most importantly Children Act 1989 s 17(1).

[80] See also on this specific issue Apprenticeships, Skills, Children and Learning Act 2009 s 198, which requires local authorities to make arrangements for 'sufficient provision of children's centres to meet local need'. Any decision to close a children's centre without proper consideration as to how else the local need for services can be met may therefore declared unlawful and quashed by the High Court on an application for judicial review.

[81] Children Act 1989 Schedule 2, Para 6

[82] Article 8 ECHR and the UN children's and disability conventions

Kate can be contacted at Scott-Moncrieff & Associates in relation to challenges on behalf of individuals or organisations. As well as work on individual cases she is also keen to promote awareness of community care legal issues within disabled people's organisations and advocacy providers, and to support them in building a national network of groups who can provide individual advice and advocacy support to disabled and other vulnerable individuals facing difficulties with these issues. Kate can be contacted by email at kate.whittaker2@googlemail.com regarding general matters or at Scott-Moncrieff & Associates, email kwhittaker@scomo.com, regarding specific case enquiries.

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July 2012

List of solicitors known to have experience in cases involving disability rights

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Bindmans LLP	Salima Budhani, Saimo Chahal, John Halford, Stephen Grosz, Charlotte Haworth Hird, Saadia Khan, Anna Mazzola, Anna Moore Gwendolen Morgan, Sara Lomri and Paul Ridge.	London but coverage throughout England and Wales	020 7833 4433	[Initial.surname]@bindmans.com e.g. j.halford@bindmans.com	Community Care, Public Law and Goods and Services Discrimination

Cumbria Law Centre	Paul im Thurn	Cumbria	01228 515129	reception@comlaw.co.uk	Public Law, Community Care, Disability Discrimination
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Disability Law Service	Solicitors include Douglas Joy and Catriona Hauser	London-based but with national coverage	020 7791 9800	advice@dls.org.uk	Community Care, Public Law, Disability Discrimination
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John Ford Solicitors	Solicitors including John Ford, Karen May, Helen Gill, Judith Lancet and Marian Shaughnessy	London based but cover England and Wales	020 8800 6464	admin@johnfordsolicitors.co.uk.	Education, Community Care and Public Law
Just for Kids Law / Lawrence & Co	Rachel Knowles	London	020 7266 7159	rachelknowles@justforkidslaw.org	Children's cases only, particularly Education, Community Care
Kirklees Law Centre	Nina Stansfield	West Yorkshire	01924 439829	info@kirkleeslc.org.uk	Community Care
Langleys	Andrea Prescott	Offices in York and Lincoln	01904 683 186	andrea.prescott@langleys.com	Community Care, Court of Protection

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Ridley and Hall Solicitors	Rebecca Chapman and Susan Cawtherley	Based in West Yorkshire but coverage throughout England and Wales	01484 538421	firstname.surname@ridleyandhall.co.uk e.g. rebecca.chapman@ridleyandhall.co.uk	Community Care
Scott-Moncrieff & Associates (Public Law Unit)	Solicitors include Mitchell Woolf, Kate Whittaker, Luke Clements, Diane Astin, Laura Janes, Yen Ly, Yolanda Faulkner, Sylvia King, Helen Jones and Andrew Sperling	Based in London but coverage throughout England and Wales	020 7485 5588	kwhittaker@scomo.com and mwoolf@scomo.com	Community Care, Public Law, Education, Disability Discrimination
Scott-Moncrieff & Associates (PI & Clin Neg Unit)	Solicitors include Richard Barr, Jenny Holt, David Poole and Michael Turner	Based in London but coverage throughout England and Wales	020 7485 5588	scomo@scomo.com	Clinical negligence, Personal Injury, including claims in a military context

Please state when calling or emailing that you obtained details from this paper.

Any solicitor who wishes to be included on this list for future versions of this paper should email s.broach@doughtystreet.co.uk or kate.whittaker2@googlemail.com with details of their firm and their experience in cases relating to disabled people.

Specialist solicitors can also be identified using the search engine on the Community Legal Service website – see www.communitylegaladvice.org.uk/en/directory/directorysearch.jsp

Inclusion of solicitors and solicitors' firms in the above table is solely on the basis that the authors are aware that the solicitor / firm practises in the area of disability rights and may be able to assist in challenges to cuts or other disability-related

cases. The list is in no way definitive or comprehensive and inclusion does not imply personal recommendation on the part of the authors.