

Disabled Young People Carers & the Law

what should happen / when things go wrong

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Programme

- Resources
- Definitions
- Assessments
- Child 'protection'
- Services
- Covid-19 impact

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Definition ~ 'disabled child'

Section 17 (10) Children Act 1989

a child is in need if she or he:

- will not achieve their development milestones unless provided with support by the local authority
- will suffer harm unless provided with support by the local authority
- Is disabled

Two groups therefore

- Neglected / abused children
- Disabled children

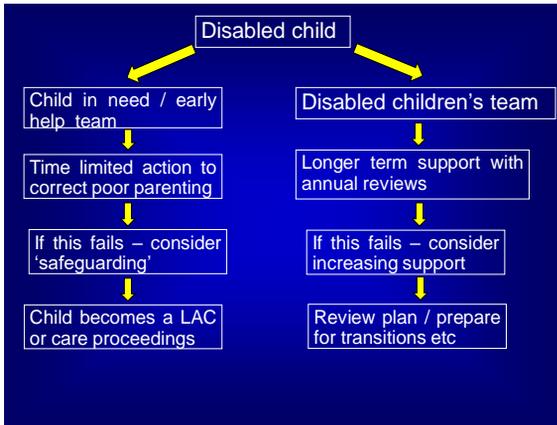
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Assessing social care needs

'Working Together' Guidance

- contains no separate assessment route for disabled children;
 - states that all children should be seen alone;
- Majority of authorities also require social workers to inspect bedrooms of all children being assessed;
- Indiscriminate policies of this kind are suspect under Articles 8 & 14 European Convention on Human Rights
 - They arise out of dysfunctional organisational cultures; the can humiliate families and make them fearful of asking social services for help.

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Assessing social care needs

No separate assessment & support pathway for children with complex sensory/emotional needs Assessors should However – in a dispute, quote – assessors should have: relevant knowledge & skills

Working Together 2018 para 49

'impairment specific knowledge – eg autism awareness-
Autism spectrum disorder in under 19s: recognition, referral and diagnosis NICE Clinical guideline [CG128]
[and by analogy] assessors must have 'suitable skills, knowledge and competence' and training

Care & Support (Assessment Regulations) 2014

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Assessing social care needs

“What if”

- What will happen if care and support is not available?
- The greater the risk to the person’s well-being the greater the onus is on the LA to meet that need – or to give cogent reasons as to why this is not necessary.
- Well-being includes physical, mental, social and emotional well-being as well as the ability to engage in employment, education, training, leisure and social activities.

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Assessing social care needs

Ombudsman considers that assessments must:

- carefully & accurately set out the YP’s needs;
- be sufficiently detailed so a proper decision to be made as to what services (if any) are required;
- if services required - these must be specified, ie what actions to be undertaken, by whom & for what purpose. If support required, then it must be explained why the assessed hours will meet the YP’s needs;
- if services not required then reasons must be given why the YP is not eligible for support.

Complaint 17 012 586 against Wirral MBC (2018) paras 23-24

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Working Together (2018)

Assessments must be ‘focused on action and outcomes for children’ and be ‘holistic in approach, addressing the child’s needs’ (para 51)

Parents and young carers have a right to assessments of their caring related needs and all these assessment must ‘feed into’ each other.

2015 Guidance advises that a ‘whole-family approach’ would ensure that family-related questions are embedded in processes at first contact and subsequently

Department of Health The Care Act and Whole-Family Approaches (2015)

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Assessing carers' needs

Duty to assess the needs of parent carers

Section 17ZD Children Act 1989

Duty to assess the needs of other adults who care for a disabled child

Section 1 Carers (Recognition and Services) Act 1995

Duty to assess the needs of young carers

Section 17ZA Children Act 1989

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Parent carers

Children Act 1989 s17ZD

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

- The assessment must have regard to the well-being of the parent carer;
- "well-being" has same meaning as in Care Act 2014.

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Well-being

relates to:

- (a) personal dignity
- (b) physical /MH /emotional;
- (c) protect abuse /neglect;
- (d) control day-to-day life;
- (e) work, education, training;
- (f) social & economic;
- (g) personal relationships;
- (h) suitable accommodation;
- (i) contribution to society.

regard to—

- (a) individual is best placed;
- (b) views, wishes and feelings;
- (c) all the circumstances;
- (d) participate in decisions
- (e) a balance between individual's and carers;
- (f) Protect abuse/ neglect;
- (g) minimum restrictions.

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A 2016 ombudsman's report

- Single mother with two children: one with significant disabilities & in need constant supervision.
- Council advised her that it expected parents to organise their work responsibilities around the needs of their children: that it was not its responsibility of to provide direct payments solely to enable parents to work
- But she could use the respite breaks she received to enable her to work

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A 2016 ombudsman's report

Maladministration

- Council has failed to understand the law.
- The child's assessment and carer's assessment should "feed into each other".
- Council knew son needed constant supervision.
- Council also knew mother in full time work and the nature of her job meant she could not pursue flexible working.
- These were key factors but neither the son's assessment nor the carer's assessment properly considered those issues

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A 2016 ombudsman's report

- Government guidance clearly states authorities should not assume a carer is happy to continue in their caring role.
- Councils are required to consider whether a carer wishes to work.
- Nothing in the assessments to suggest the Council properly considered the impact on ... if she did not receive support during school holidays.
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Kent County Council No. 14 015 230 7 June 2016.

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Young carers

Children Act 1989 s17ZA

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

- Detailed assessment regulations;
- Young Carers' (Needs Assessments) (England) Regulations 2015

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Getting it in writing

- Copies of care assessments
- Copies of care plans;
- Challenge anything that is factually incorrect (or missing from the record)
- 'Data subject request



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Child protection

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Child protection

Children Act 1989 section 17

- Duty to assess the support needs of children in need

Children Act 1989 section 47

- Duty on a local authority – when it has 'reasonable cause to suspect that a child ... in their area is suffering, or is likely to suffer, significant harm' to make such enquiries 'to enable them to decide whether they should take any action to safeguard or promote the child's welfare'.

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Child protection

Put it in writing

Put everything in writing

Get support

- Local independent user led organisation
- Legal or advocacy support

Where appropriate refer to Article 8 ECHR

Severe interference with private and family life



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Care plans and services

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Services and support

Children Act 1989 section 17

Includes home & community based support ;

- Respite and personal care
- Includes accommodation and cash (s17(6))
- Includes **direct payments** (s17A)
- Can be provided for family members (s17(3))

Chronically Sick & Disabled Persons Act 1970

- Includes home & community based support.

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Children Act 1989 Sch 2 Part 1

Support includes (para 8):

- advice, guidance and counselling;
- occupational, social, cultural or recreational activities;
- home help (which may include laundry facilities);
- 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;
- assistance to enable the child concerned and his family to have a holiday.

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Direct payments

- LAs 'must not restrict choice or stifle innovation'
- pre-payment cards cannot be mandatory nor may they 'limit choice and control' as direct payments should 'encourage flexibility and innovation'

Statutory Guidance para 12.4 and 12.59

- NICE 2018 Guidance on DPs states that their care plans should be flexible to 'accommodate changes to a person's priorities, needs and preferences' and that in order to facilitate this, local authorities should consider 'agreeing a rolling 3-monthly budget so that people can use their money differently each week'.

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Direct payments

Ombudsman's reports

- 2018 report found maladministration where a council sought to recover DP monies spent on birdwatching and gardening equipment when the assessment identified the need as being to access community activities.
No 17 013 291 (Norfolk CC) 24 April 2018
- 2018 report concerned a DP used to provide respite care to enable a husband to pursue his walking hobby
No 17 011 713 (Kirklees MBC) 26 Sept 2018
- 2018 report concerning pet care costs
No. 13 014 946 (Central Bedfordshire C) 15 Jan 2016

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Direct payments

- Would include any support assessed as required under the Children Act 1989 or the Chronically Sick and Disabled Persons Act 1970 – so, for example, short breaks care

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Care and support services

Support should change as a child ages

- ie support – independent of family – to make independent friends / share independent activities in the community

Specialist services – a sensory respite centre

- See for example *R (CP) v NE Lincolnshire Council* [2019] EWCA Civ EWCA Civ 1614 where a father created a specialist provider agency which supported (among others) his daughter

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Covid-19 impact

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Covid-19 impact

Challenging 'inflexible' 'we can't ...

- Suggest alternatives – authorities must explore reasonable options

Guidance stresses the need for flexibility - eg

- Department of Health *Using direct payments during the coronavirus outbreak: full guidance for people receiving direct payments and personal assistants* (Sept 2020)

Challenging behaviour Foundation Covid-19 Information Page <https://www.challengingbehaviour.org.uk/>

Problem of councils / NHS not reinstating services – complain and complain quickly

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Resources

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