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Supporting disabled parents: social care services for parents and adults in a parenting role

References

CA89: *Children Act 1989*
CA04: *Children Act 2004*
CSDPA: *Chronically Sick and Disabled Persons Act 1970*
DDA95: *The Disability Discrimination Act 1995*
DDA05: *The Disability Discrimination Act 2005*
FACS: *Fair Access to Care Services, 2002*
Framework: *The Framework for Assessment of Children in need and their Families, 2000*
NAA: *National Assistance Act 1948*
NHSCCA: *National Health Service and Community Care Act 1990*

Introduction

If you are a parent or a person caring for a child, and you suffer from a disability you may feel you need some support to care for your child. The local authority is responsible for providing support to people in your situation and this support can be provided either by Adult or Children's Services departments within the local authority, or a combination of both. Until recently these departments were known as social services.

The duties of local authorities and other public organisations to provide services to people in your situation, and your rights to receive such services, are set out in the law and official guidance. Sometimes, it can be difficult to understand how all these different duties and rights fit together, so this advice sheet sets them out in 2 parts:

- A) The general framework which promotes equality of opportunity and makes discrimination against disabled parents unlawful;
- B) The responsibilities of Adult Services to support disabled parents/carers.

In this advice sheet, the legal references are set out in the narrow column on the right. If you need further advice or information you can contact Family Rights Group Advice line or any of the organisations listed at the end of this advice sheet.

A : The General Framework

The government's policy position is that disabled parents and carers' main difficulties stem from the lack of suitable support for their needs, rather than from their disability. It has therefore made it clear that help with parenting for disabled adults is an essential task for adult social services teams, and that *children* should not automatically be seen as in need of help just because they have a disabled parent or carer.

The government requires the Adult and Children's Services departments of the local authority to work together to support parents with learning disabilities and their children. It is also clear that these departments should not assume that children and young people can take care of their parents, particularly those with mental illness.

Services should be provided to the parent or carer to enable the children of the family to "*benefit from the same life chances as all other children, and have the opportunity for a full education, and leisure and social activities.*"

1. The right not to be discriminated against

Disabled people have the right not to be discriminated against.

Discrimination occurs when disabled people are treated less favourably because of their disability, and there is no objective justification for that difference of treatment.

The law also says that people who provide services to the public (including local authorities, lawyers, social services and the courts, as well as shops, restaurants, sports centres and schools) must make "reasonable adjustments" to how they provide services, to ensure that disabled people can get the same level of service as non disabled people.

A 'reasonable adjustment' could be:

- The provision of ramps and wheelchair access to premises.
- Properly qualified interpreters, using your language of choice.
- Advocates.
- Equipment, such as an induction loop or large print information.

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Department of Health, Modernising social services, (1998) para 2.1; A Jigsaw of Services: Inspection of services to support disabled adults in their parenting role, (2000), Department of Health

Good practice guidance on working with parents with a learning disability, (2007) DoH/DfES

Michele Wates, Supporting disabled parents in their parenting role, 2002, JRF

R Olsen and H Clark, Parenting and disability: Disabled parents' experiences of raising children, 2003, the Policy Press

S1 DDA 1995

DDA 1995 Part III

2. The right to equality of opportunity

Local authority Adult and Children's Services departments also have a duty to promote equality of opportunity for disabled people (known as the disability equality duty).

S49A DDA 95

To achieve this, these two departments must have due regard to the need to:

*Disability
Discrimination (Public
Authorities) (Statutory
Duties) Regulations
2005, reg 2*

- *promote equality of opportunity between disabled people and other people*
- *eliminate unlawful discrimination*
- *eliminate the harassment of disabled persons that is related to their disabilities*
- *promote positive attitudes towards disabled people*
- *encourage participation by disabled people in public life; and*
- *take steps to take account of disabled people's disabilities, even where that involves treating disabled people more favourably than other people.*

*Code of Practice,
England and Wales*

Local authorities must publish their Disability Equality Scheme, which sets out how they will meet this duty.

3. Rights under the Human Rights Act 1998 (HRA)

The HRA incorporates the European Convention on Human Rights into UK law and applies to all people in the UK. Local authorities, health providers, other public authorities and the courts are bound by the HRA. Any of these bodies can be challenged in court if they act in a way which is incompatible with a person's human rights.

S6, 7 HRA

The following provisions are particularly relevant to disabled parents and carers who are asking for social care services:

Article 6 – right to a fair hearing

This includes court cases as well as case conferences and other meetings arranged by Adult and Children's Services departments. If a parent has special needs, for example, access to an interpreter, or the need to rest in the afternoon, local authority social care services and the courts should take this into consideration when fixing meetings/court hearings. They should also ensure that the parents are able to participate fully in any discussions and have information explained to them in a way that is appropriate for their needs.

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Article 8 – right to respect for private and family life.

A local authority can only interfere with family life if it is necessary for the safety of others (for example the protection of children) and it has the legal power to do so. A local authority should only take action that is ‘proportionate’ to the problem.

Decisions to remove children must take into account the availability of additional help, and whether it would be more appropriate to provide additional family support rather than remove a child. Decisions should be made in a way that is fair and involves the family in the decision making process. In addition, local authorities have a positive duty to promote family life, by, for example, providing services to disabled people to enable them to access leisure and other activities.

Kutzner v Germany
[2002] 35 EHRR 25

R (A,B,X&Y) v E
Sussex County
Council (2003) 6
CCLR 194

Article 14 – right to enjoy the other rights within the Convention without discrimination of any kind.

This means that a disabled person has the same right as everybody else to have a family life, and a fair hearing, for example at local authority social care services meetings, and that the state should take all steps to enable them to exercise this right.

B: Duties on the Adult Services’ Department

1. The duty to provide information about services

All local authorities must provide information in an accessible form about their services. Service plans should be available to all members of the public in different formats, including different community languages.

S1 CSDPA 1970

Fair Access to Care
Services (2003), DOH

DDA 95 Part III

2. Community care: Assistance with daily living

The aim of community care services is to help adults who are disabled to live as independently as possible. This includes considering what support they need as a parent. Therefore when they conduct an assessment of a person’s community care needs Adult Services must take account of their needs as a parent and other family responsibilities

FACS para 5.11

For community care purposes, a person is disabled if they are:

National Assistance
Act 1948, Section 29
(1).

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“blind or deaf or dumb or suffers from mental disorder of any kind, or is substantially and permanently handicapped by illness, injury or congenital deformity or any such other disability as may be prescribed”

Who can get a community care assessment?

Adults who have difficulty living independently because of:

- disability
- learning disability
- mental health problems
- chronic or severe health problems;

or

who ‘appear to be in need of community care services’, are entitled to an assessment of their needs.

*S4 Disabled Persons
Act 1986; S47(1)
NHSCCA 1990*

How will Adult Services assess my need for community care services?

A community care assessment should be carried out by the local authority in such a way that it captures both the needs that the parent has identified as existing as well as those that the assessor (someone from the local authority) also identifies.

The purpose of the assessment *“is to identify and evaluate an individual’s presenting needs and how they constrain or support his/her capacity to live a full and independent life.”*

*FACS Policy
Guidance, paragraph
28*

The assessment must be carried out in accordance with Government guidance set out in Fair Access to Care Services.

*Fair Access to Care
Services (2003), DOH*

What should I say when I ask for an assessment?

If you want your needs to be assessed, it is helpful to write out details of your disability or impairment, the effect it has on you and the reasons why you need help.

You can then list the sort of services that would help, for example:

- help with the “school run”;
- a support worker to help to care for a baby or young child for a number of hours a day;
- equipment to enable you to help your child with homework;
- help with transport for teenagers’ activities.

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It is also useful to get supporting letters from others involved with your family, for example, doctors or the school.

What will happen during the assessment?

The local authority will send a social worker, an occupational therapist, a community nurse or other health worker to see you. He/she will carry out the assessment.

If you want, you can have someone you know, such as a relative or friend, to support you or to speak for you during the assessment.

If you already have someone who helps to meet your needs (a carer), they should be involved too.

In most cases the assessment should be multidisciplinary, which means it will involve health professionals (such as the GP) as well as the social worker. The assessment can also include other people, who have relevant information.

The assessment should identify your areas of difficulty, for example:

- how you are managing in the home
- what tasks you can and cannot do
- what help you feel you need

If you have a carer, the local authority should take account of their views, and also of their needs. They should ask the carer whether they want a separate assessment of their needs.

Carers –The Carers and Disabled Children Act 2000: a practitioners guide to carers assessments

The assessment should help the local authority to find out whether you need help in any of the following areas:

- personal care
- care of your family
- getting about in your home
- eating and drinking
- personal safety
- communication
- household tasks
- transport
- support for your carer

FACS Policy Guidance, paragraph 9

Do Adult Services have to take account of my parenting responsibilities?

As stated above, when Adult Services respond to your request for community care services, they have a statutory responsibility to check whether you have parenting responsibilities, and if so to take this into account as part of their assessment.

FACS para 5.11

How do Adult Services decide what services to offer me?

The guidance says that an assessment must apply national '**eligibility criteria**' then decide overall which band of need the person's needs fall into. There are four bands – critical, substantial, moderate and low.

FACS para 16

Note:

- Family responsibilities must be taken into account at each level.
- Each local authority will have their own policy on which bands they will provide services for.
- When considering whether a parent is eligible for help, Adult Services must consider whether, if help is not provided, there is likely to be deterioration in the situation in the foreseeable future. They must take into account whether the lack of help would compromise key aspects of independence, including parenting responsibilities.

FACS para 65

If you qualify for services under the eligibility criteria, the assessment will be the basis for planning the services you could receive. Adult Services must then draw up a "care plan" and you should receive a copy of the plan. The care plan will set out your needs and how the local authority will meet them. It is an important document, as you can use it if necessary in challenging the local authority about their decisions.

If the local authority decides you are eligible for a service, then it must provide that service.

Can I receive help in the form of cash?

If Adult Services agree to provide services to you as a disabled

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adult under the community care assessment, they must (in England) and may (in Wales) give you a “direct payment”, unless they consider that you could not manage this.

Direct payments guidance: Community care, services for carers and children’s services (direct payments) guidance, para. 47, DoH (2003)

This is a cash payment which you can use to buy the services that you need, for example, help with care in the home.

The direct payment will usually be a regular payment for services, but can also be a one off payment, for example, for a piece of equipment.

If your child is classed as a “child in need” the local authority can give you direct payments as a disabled parent under the Children Act to assist you in meeting the needs of your child

Can I get help for my children from Adult Services?

As well as assessing what help you need to look after your child, Adult Services must also consider what needs to be done to ensure your child is safe and their wellbeing is promoted. Sometimes this will involve your child’s needs being assessed alongside your own. This will be done by Children’s Services who should work in collaboration with Adult Services. An assessment of your child needs should follow Government guidance: Framework for Assessment of Children in Need and their Families.

FACS para 9; Para 5.11

Framework for the Assessment of Children in Need and their Families, DoH 2000

However, it is important to note that a “child in need” assessment should only be undertaken by Children’s Services if the services provided by Adult Services are not sufficient to enable you to meet your child’s needs.

What if my child is helping to care for me?

The Framework guidance states that a child in need assessment should include an assessment of family circumstances. Young people should not be expected to take on inappropriate levels of caring for a parent who has a disability.

Framework para 3.62

Where a child is providing a high level of care, services should be provided to the parent (by Adult Services) to enhance their ability to fulfill their parenting responsibilities. If your child is providing a substantial amount of care on a regular basis for you, he or she

Framework para 3.63

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will be entitled to an assessment of their ability to care under section 1(1) of the *Carers (Recognition and Services) Act 1995* and the local authority must take that assessment into account in deciding what community care services to provide for you.

For advice and support about young carers go to <http://www.youngcarer.com>

What happens if I am unhappy about the result of the assessment?

If you are unhappy with the result of your assessment, you can:

1. Make a formal complaint to the local authority;
2. Ask your local councillor and/or MP to intervene on your behalf;
3. Ask the Local Government Ombudsman to investigate your case (You can only do this if you have already made a formal complaint to the local authority and the matter has not been resolved satisfactorily);
4. Apply to the court under the Human Rights Act 1998 if there has been a breach of your human rights; and/or
5. Apply to the court for judicial review of the local authority's decision.

Local Authority Social Services Complaints (England) Regulations 2006

For more information see FRG Advice sheet on: 'Challenging decisions and making complaints' or contact the FRG advice line.

C. Legal advice and support

1. Getting a Solicitor:

It should be possible to get support for a parent or child without legal advice. However, if there are having difficulties in getting the services, or matters are likely to go to court, we strongly recommend getting a solicitor.

We hear of many cases where solicitors have not understood the needs of a disabled parent or carer. It is important to check the following before instructing a solicitor:

- Is the solicitor a member of the Law Society Children

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- Panel or an accredited parents' representative?
- Does the law firm do publicly funded cases?
 - Does the solicitor have experience of "community care" cases (i.e. social services provision for disabled adults)?
 - Has the law firm successfully represented disabled parents and carers in similar situations?
 - Has the solicitor had training in disability issues?
 - Do they work to the "social model" of disability, which says that it is the barriers created by the physical, and social environment, rather than a person's impairment, which are the problem?

Are their offices accessible to disabled people and is their information suitable for people who do not follow legal jargon?

If the family already has an advocate (who could be a family member, a friend or person provided by an organisation) they can come along to meetings. If not, we strongly recommend that the family tries to get an advocate, as research shows that advocates have a very important role to play in getting people a proper assessment and adequate support.

To find a solicitor, contact:

The Law Society of England and Wales

113 Chancery Lane
London WC2A 1PL
Tel: 020 7242 1222
Minicom: 0870 600 1560. Fax: 020 7831 0344
E-mail: contact@lawsociety.org.uk
www.lawsociety.org.uk

2. Where can I get more information?

Family Rights Group

The Print House
18 Ashwin Street
London E8 3DL
Tel: 020 7923 2628
Advice line: 0808 801 0366 (open Mon to Friday 10am-3:30pm)
www.frg.org.uk

Family Rights Group runs an advice service providing information, advice and support to families involved with social care services. You can ring our freephone advice line or email us

at advice@frg.org.uk. We have a range of free advice sheets on subjects such as child protection, adoption, family support services and making a complaint which are all on our website.

Change

www.changepeople.co.uk

– a charity that fights for the rights of learning disabled people.

DPPI (Disability, Pregnancy and Parenthood International)

National Centre for Disabled Parents,

Unit 9

89-93 Fonthill Road

London N4 3JH

Tel: 0800 018 4730

Free-text: 0800 018 9949

www.dppi.org.uk

DPPI is a small UK based registered charity, controlled by disabled parents, which promotes better awareness and support for disabled people during pregnancy and as parents.

Disabled Parents Network

Tel: 0870 241 0450

Email information@disabledparentsnetwork.org.uk

www.disabledparentsnetwork.org.uk

Disabled Parents Network (DPN) is a national organisation of and for disabled people who are parents or who hope to become parents, and their families, friends and supporters. DPN operates a telephone help line run by disabled parents. Their website contains a resource directory consisting of frequently asked questions and other sources of information, fact sheets and books for and about disabled parents.

Disability Alliance

Universal House

88-94 Wentworth Street

London E1 7SA

Tel: 020 7247 8776

www.disabilityalliance.org

The Disability Alliance has information about benefits and other financial issues affecting disabled parents and carers.

Equality and Human Rights Commission

The Commission has offices in London, Manchester, Cardiff and Glasgow. Contact details can be obtained from the website,

<http://www.equalityhumanrights.com>

3 More London, Riverside Tooley Street SE1 2RG

Telephone 020 3117 0235 Helpline: 08456046610

Fax 01925 884 275

info@equalityhumanrights.com

The Equality and Human Rights Commission can give advice on any complaints about discrimination or breach of human rights and has useful information.

Family and Parenting Institute (FPI)

430 Highgate Studios

53-79 Highgate Road

London NW5 1TL

Tel: 020 7424 3460

www.familyandparenting.org

The FPI has published information for parents and practitioners about the needs of disabled parents. See “Think Parent: supporting disabled adults as parents” by Richard Olsen and Helen Tyers, NFPI 2004.

There are also a number of organisations which specialise in supporting people with specific disabilities, for example:

Mencap

www.mencap.org.uk

- a leading learning disability charity working with people with a learning disability and their families and carers.

Mind

www.mind.org.uk

- a leading national mental health charity.

Scope

www.scope.org.uk

- a charity whose focus is people with cerebral palsy.

Values into Action

www.viauk.org

- a UK campaign with people with learning disabilities.

Last updated Oct 09