

Disabled children, young people and families – the law in a day

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Steve Broach
Barrister
Monckton Chambers

This presentation is intended for general information and should not be relied upon in relation to any individual case.

Some basics

1. Domestic law

- a. Acts of Parliament – eg Children Act 1989
 - i. Difference between powers and duties
- b. Regulations – eg SEN and Disability Regulations
- c. Rules, Directions, Orders etc

2. Case Law – what does ‘precedent’ mean?

3. Guidance

- a. Statutory
- b. Non-statutory

Judicial Review

- Process by which the High Court reviews the lawfulness of decisions by public bodies, or their policies
- Generally focus on process
- Decisions or policies can be unlawful in substance if they are unreasonable or disproportionate
- Usual remedy – quashing order
- Legal aid may be available in child's name

Duties not to discriminate

1. Equality Act 2010

1. Direct discrimination
2. Indirect discrimination
3. Discrimination arising from disability
4. Failure to make reasonable adjustments

2. Human rights

1. Article 14 ECHR
2. Requires another ECHR right – eg Article 8
3. Brings in other international law principles, eg children's best interests

Key human rights instruments

- European Convention on Human Rights (ECHR)
 - Incorporated into English law through Human Rights Act 1998 – see section 6
- UN Convention on the Rights of the Child (CRC) – applies up to 18
- UN Convention on the Rights of Persons with Disabilities (CRPD)
 - Not part of English law, but relevant in three ways

Relevance of CRC / CRPD

From *SG v SSWP* ('Benefit Cap' case)

1. Inform decisions on whether ECHR rights have been infringed – e.g. *Mathieson* in relation to children's best interests
2. Help resolve any ambiguity in domestic legislation
3. Inform development of common law

Article 23 CRC – disabled children

- Right to ‘full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child’s active participation in the community.’
- Right to ‘special care’
 - subject to ‘available resources’
 - education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities
 - fullest possible social integration / development

Participation

- Article 8 ECHR
 - Right to be heard on decisions which impact on your private life (inc ‘physical and psychological integrity’), family life and home
- Article 12 CRC / Article 7 CRPD
 - Children’s right to participate – views given ‘due weight in accordance with the age and maturity of the child’
- Article 3(c) CRPD – general principle of participation

Best Interests

- Article 3 CRC
 - All children
- Article 7 CRPD
 - Disabled children

‘In all actions concerning children...the best interests of the child shall be a primary consideration.’

Children's Welfare

Section 11 of the Children Act 2004 (social care and other local authority functions)

Section 175 of the Education Act 2002 (local authority education functions and schools)

Duty to 'have regard to the need to safeguard and promote the welfare of children'

- Requires 'active promotion' of children's welfare
(Baroness Hale in *HC*, see also *R (J and L) v Hillingdon*)

Challenging Cuts – PSED

Section 149 of the Equality Act 2010

Requires public bodies to have ‘due regard’ to a series of specified needs when carrying out their functions.

Includes needs to eliminate discrimination and advance equality of opportunity

Bracking – two key issues:

1. Proper understanding of impact of the decision on disabled children and families
2. Specific regard to the needs specified in section 149

Challenging Cuts – PSED

Recent case example – *R (DAT and BNM) v West Berkshire*

– West Berkshire Council decided to cut funding for short breaks provided by voluntary sector by 52%

– Challenged through judicial review (two children, legal aid).

– Court held decision unlawful because

– No consideration of relevant legal duties

– Misdirection as to the requirements of the PSED

• Decision quashed, council required to reconsider

Challenging Cuts – Consultation

See *KE v Bristol* – c.£5m budget cuts unlawful through failure to consult (amongst other reasons)

Moseley v LB Haringey – Supreme Court

Approved principles from *Coughlan* – consultation must:

1. Take place at formative stage
2. Allow adequate time for responses
3. Provide sufficient information to consultees
4. Involve proper consideration of responses

CFA - Importance of s 19 principles

Section 19 CFA provides that:

In exercising a function under this Part in the case of a child or young person, a local authority... must have regard to...

the need to support the child and his or her parent, or the young person, in order to facilitate the development of the child or young person and to help him or her achieve the best possible educational and other outcomes.

Applies to everything done under CFA

Definitions

- SEN - a learning difficulty or disability which calls for special educational provision (SEP)
- SEP - educational or training provision that is additional to, or different from, that made generally for others of the same age in mainstream schools in England
- Health care provision or social care provision which educates or trains a child or young person is to be treated as special educational provision (instead of health care provision or social care provision) – section 21(5)

Health / Social Care divide

- *R (T, D and B) v Haringey LBC*
- 3 year old child with tracheostomy – required significant levels of nursing care
- Court held this went beyond the scope of the local authority's duties
- Local authorities are not allowed to act as a 'substitute NHS for children'
- See the National Framework for Children and Young People's Continuing Care

Health / Social Care divide

- *R (Juttla and others) v Herts Valleys CCG*
- Challenge to decision to cease funding for respite unit (Nascot Lawn)
- Court held CCG had wrongly decided that unit was not providing ‘health services’
- Decision quashed

Support from school

- Presumption in favour of maintained nursery school, mainstream school or mainstream post-16 – section 34
- SEN support – four part cycle
 - Assess
 - Plan
 - Do
 - Review – all funded via notional SEN budget + top up
- Governors' best endeavours duty – section 66
- Duties to meet medical needs

Schools – Reasonable Adjustments

– Duty to make RA applies to

- Policies (provisions, criteria or practices)
- Auxiliary aids and services

– Covers admissions, exclusions and the provision of education in the school

– No fixed definition – must make any adjustments it would be ‘reasonable’ to make

– Duty is ‘anticipatory’

- Applies in relation to disabled children generally, not just those already in the school

Schools – Reasonable Adjustments (2)

- No charge can be made for RA
- Cost relevant to whether the adjustment requested is ‘reasonable’
- Schools must also prepare ‘accessibility plans’, including in relation to physical features
- Remedy – appeal to First-tier Tribunal
- Also consider
 - Discrimination arising from disability
 - Indirect discrimination

Children out of education

Education Act 1996 section 19

- ‘(1) Each local authority shall make arrangements for the provision of suitable education at school or otherwise than at school for those children of compulsory school age who, by reason of illness, exclusion from school or otherwise, may not for any period receive suitable education unless such arrangements are made for them.’
- Full time unless child needs less
- Also – human right to education (Article 2 of the First Protocol ECHR)

Strategic duties

- Section 25 – LAs must carry out functions with view to integrating education, health and social care provision
- Section 26 – duty to have joint commissioning arrangements (Code Ch 3)
- Section 27 – duty to keep education and care provision under review and consider sufficiency
- Sections 28, 29, 31 – co-operation duties

Health / Education / Social Care interface

- Key existing law re social care / health
 - Children Act 1989 section 17 /
Working Together to Safeguard Children (2015)
 - **All ‘disabled children are children ‘in need’**
 - Duty to carry out some form of assessment for all children in need (see handout re Warwickshire case)
 - Timescale – maximum of 45 working days
 - Immediate response in urgent cases
 - Requirement for child in need plan
 - Link to [Chronically Sick & Disabled Persons Act 1970 s 2](#)

Health / Education / Social Care interface

- Chronically Sick and Disabled Persons Act (CSDPA) 1970 s 2
 - Duty to provide extensive list of services where necessary to meet needs
 - LA can take account of resources when deciding whether ‘necessary’ (not just desirable) to provide service
 - BUT once accepted to be necessary to provide service, must provide sufficient service to meet need

Health / Education / Social Care interface

- The CSDPA service list
 - Practical assistance in the home
 - Recreational facilities, or assistance in obtaining
 - Assistance in taking advantage of available educational facilities
 - Transport to any social care services
 - Adaptations to home or additional home facilities
 - Holidays
 - Meals
 - Telephone, inc special equipment to use one

Health / Education / Social Care interface

CSDPA 1970 s 2(4):

‘(4) Where a local authority have functions under Part 3 of the Children Act 1989 in relation to a disabled child and the child is ordinarily resident in their area, they must, in exercise of those functions, make any arrangements within subsection (6) that they are satisfied it is necessary for them to make in order to meet the needs of the child.’

Short Breaks

- Breaks for Carers of Disabled Children Regs
 - Reg 3 – must have regard to needs of carers who would be able to provide care for their disabled child more effectively if breaks from caring were given to them to allow them to—
 - undertake education, training or any regular leisure activity,
 - meet the needs of other children in the family more effectively, or
 - carry out day to day tasks which they must perform in order to run their household.

Short Breaks

- Breaks for Carers of Disabled Children Regs
 - Reg 4 – a local authority must provide, so far as is reasonably practicable, a range of services which is sufficient to assist carers to continue to provide care or to do so more effectively
 - Includes daytime and overnight care, leisure activities and weekend and holiday services
 - Reg 5 – ‘short breaks services statement’
 - range of services, any eligibility criteria and ‘how the range of services is designed to meet the needs of carers in their area’.

Health / Education / Social Care interface

- Residential short breaks
 - Only important social care service incapable of being provided under CSDPA s 2.
 - If family are in ‘actual crisis’ then may be a specific duty to provide breaks under Children Act 1989 s 20
 - Otherwise ‘general duty’ under Children Act 1989 s 17 – governed by rationality

Duties to parent carers

- Section 97 – parent carers’ needs assessments
 - Inserts new sections 17ZD-ZF into CA 1989
 - Requires PCNA to be carried out either on request or where appearance of need (s 17ZD(3))
 - Must have regard to well-being of parent carer and need to safeguard and promote welfare of disabled child (s 17ZD(10))
 - May be combined with other assessments (s 17ZE(3))
 - cf new ‘Young Carers Assessments’

Duties to parent carers

- Is there a new duty to provide services to parent carers?
 - Section 17ZF requires ‘consideration’ of PCNA
 - In particular:
 - Does the parent carer have needs for support in relation to their caring role?
 - Does the disabled child have needs for support?
 - Could those needs be satisfied by services provided under section 17?
 - Must then decide ‘whether or not to provide any such services in relation to the parent carer or the disabled child’

Health / Education / Social Care interface

- Key existing law re social care / health
 - National Framework for Children’s Continuing Healthcare
 - Applies to ‘complex’ cases – inc behaviour
 - National Framework reissued Feb ‘16 accompanied by
 - Pre-assessment checklist
 - Decision support tool
 - Guide for young people and parents (2 sides!)
 - Guidance on who is eligible – Decision Support Tool
 - Decision on eligibility in 6-8 weeks, then package of care (led by CCG?)

Health / Education / Social Care interface

- EHC needs assessment – section 36
- Must carry out an assessment where
 - CYP has or may have SEN; AND
 - It may be necessary for special educational provision to be made for the child or young person in accordance with an EHC Plan
- Key factors to consider – SEND Code at para 9.14
- Can be requested up to 25th birthday

Health / Education / Social Care interface

- Advice and information requirements
- Regulation 6 of the SEND Regs 2014
- Extensive list of professional advice required, inc
 - Educational psychologist
 - Social care
- Must be obtained unless everyone inc parent or YP agrees not needed...

Health / Education / Social Care interface

- When must an EHC Plan be issued?
- Section 37
 - Where, in the light of an EHC needs assessment, it is necessary for special educational provision to be made in accordance with an EHC Plan
- SEND Code at para 9.56
 - Whether provision required could reasonably be provided from resources normally available to maintained schools

Health / Education / Social Care interface

- Timescales
- SEND CoP at para 9.40:
‘The whole process of EHC needs assessment and EHC plan development, from the point when an assessment is requested (or a child or young person is brought to the local authority’s attention) until the final EHC plan is issued, **must** take no more than 20 weeks (subject to exemptions set out below).’

Health / Education / Social Care interface

- EHC Plans – single document, but different duties to include provision and to provide it
- Section 37(2) - must include:
 - Special educational provision
 - ‘health care provision reasonably required by the learning difficulties and disabilities which result in him or her having special educational needs’
 - See further Code at Ch 9.62

Health / Education / Social Care interface

- Section 37(2) re social care – must include:
 - For under 18s, any social care provision which must be made as a result of section 2 of the Chronically Sick and Disabled Persons Act (CSDPA)1970
 - Any other social care provision reasonably required by the learning difficulties and disabilities which result in the child or young person having special educational needs

Health / Education / Social Care interface

- Key sections of EHC Plans
 - Sections B-D – needs
 - Section E – outcomes
 - Section F – special educational provision
 - Section G – health care provision
 - Sections H1 and H2 – social care provision
 - Section I – placement
 - Section J – direct payment

Health / Education / Social Care interface

- Duty to provide – section 42:
 - The local authority must secure the specified special educational provision for the child or young person.
 - If the plan specifies health care provision, the responsible commissioning body must arrange the specified health care provision for the child or young person.
 - No legal diff ‘secure’ and ‘arrange’ – same duty

Health / Education / Social Care interface

- Placements
- Section 39
 - Local authority must name requested school or institution unless
 - Unsuited for CYP; or
 - Incompatible with provision of efficient education for others; or
 - Incompatible with efficient use of resources.
 - Includes independent schools on approved list

Health / Education / Social Care interface

- Reviews and reassessments
- Section 44
 - Requirement for annual reviews of EHC Plans
 - Further requirements in relation to transfers between phases of education
 - Duty to review is on local authority
 - Reassessments must be carried out if
 - No assessment in previous six months; and
 - Local authority considers it is necessary.

Health / Education / Social Care interface

- Attending reviews - Code at para 9.173
 - ‘As part of the review, the local authority and the school, further education college or section 41 approved institution attended by the child or young person must cooperate to ensure a review meeting takes place. This includes attending the review when requested to do so.’

Personal Budgets

- Already available in health and social care
- C&F Act extends to education
- Two key issues
 - whether a ‘direct payment’ will be available – section 49:
 - Personal Budget information must be provided (although Regulations exempt services which cannot be disaggregated)
 - Direct Payment may be available
 - How much money will be offered...

Personal Budgets

– Relevant regulations:

- Special Educational Needs (Personal Budgets) Regulations 2014
- Community Care, Services for Carers and Children's Services (Direct Payments) Regulations 2009 (replaced for adults by those made under the Care Act 2014)
- National Health Service (Direct Payments) Regulations 2013
- National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) (No. 3) Regulations 2014

Personal Budgets

– In essence...

- SEN – no DPs if to do so would cause adverse impact on other CYP with EHC Plans or making the DP would be an inefficient use of the LA resources
– Reg 6 of the SEN PB Regs & CoP at 9.123
- Social care – direct payment must be made unless limited exceptions, primarily related to capacity of parent to manage money, apply
- Health – power but currently no duty to make DP for any health service (inc to child's representative)

Personal Budgets

- Level of personal budget / direct payment must be set at the reasonable cost of securing the necessary services
 - CoP at 9.102; ‘The final allocation of funding budget **must** be sufficient to secure the agreed provision...’
 - CoP at 9.106; ‘Local authorities must consider each request for a personal budget on its own individual merits’.
- Resource Allocation Schemes can only give ‘indicative’ amount
 - See *R (KM) v Cambridgeshire CC*
<http://www.bailii.org/uk/cases/UKSC/2012/23.html>

Local Offer

– C&F Act section 30

- Requirement to publish information about provision expected to be available within and outside LA's area
- Must consult and publish comments about local offer at least annually

– Regs 53-57 & Sch 2 SEN and Disability Regs 2014

- Who to consult and involve
- Requirements as to publication of comments
- Requirements as to publication of Local Offer itself

Housing

- Duties on housing and children’s services to co-operate to promote children’s well-being
 - *R (J and L) v Hillingdon* – failure of co-operation
- Housing issues should be addressed in all child in need assessments (CA 1989 s 17)
- Families with disabled children may have ‘priority need’ so they can bid for social housing
- Families with disabled children can make ‘homelessness’ applications (Part VII HA 1996)
- Adaptations – Disabled Facilities Grants

School Transport

- Governed by Education Act 1996
- ‘Eligible’ children aged 5-15 – duty to provide free, suitable transport (s 508B)
- Children aged under 5 or 16-17 – power to provide suitable transport – can charge
- Over 18s – duty to provide suitable transport to ‘adult learners’ – free of charge (s 508F)
- Post-16 transport policy statement – s 509AA and AB

School Transport (2)

Children with SEN as 'eligible' children:

A child falls within this paragraph if–

- (a) he is of compulsory school age and is any of the following—a child with special educational needs, a disabled child, a child with mobility problems,
- (b) he is a registered pupil at a qualifying school which is within walking distance of his home,
- (c) no suitable arrangements have been made by the local authority for enabling him to become a registered pupil at a qualifying school nearer to his home, and
- (d)...he cannot reasonably be expected to walk to the school mentioned in paragraph (b).

School Transport (3)

Children outside statutory walking distance:

A child falls within this paragraph if–

- (a) he is of compulsory school age and is a registered pupil at a qualifying school which is not within walking distance of his home,
- (b) no suitable arrangements have been made by the local authority for boarding accommodation for him at or near the school, and
- (c) no suitable arrangements have been made by the local authority for enabling him to become a registered pupil at a qualifying school nearer to his home.

School Transport (4)

Statutory guidance:

Home to school travel and transport guidance, July 2014

- Eligibility for disabled children should be assessed on an individual basis to identify their particular transport requirements.
- Consideration of whether children can ‘reasonably be expected to walk to school’ accompanied ‘and, if so, whether the child’s parent can reasonably be expected to accompany the child’.
- ‘For arrangements to be suitable, they must also be safe and reasonably stress free, to enable the child to arrive at school ready for a day of study’.

School Transport (5)

Statutory guidance:

Home to school travel and transport guidance, July 2014

- Mandatory appeal process – see Part 5 and Annex 2
- Stage 1 review by senior officer
- Stage 2 review by Independent Appeal Panel
 - Parents have 20 working days from receipt of stage 1 decision to appeal
 - Decision within 45 working days of appeal notification
- If no resolution
 - Complaint to LGO
 - Judicial review

School Transport (6)

Statutory guidance:

Post 16 transport to education and training, Feb 2014

- ‘Overall intention of the 16-18 transport duty is to:
 - ensure that learners of sixth form age are able to access the education and training of their choice
 - ensure that, if support for access is required, this will be assessed and provided where necessary.’
- ‘a local response to transport arrangements is important in enabling young people’s participation in education and training’
- ‘The transport policy statement is intended to inform young people in years 11, 12 and 13 and their parents about what transport arrangements and support are available locally.’

School Transport (7)

Statutory guidance:

SEND Code of Practice, January 2015

- Para 9.214 re EHC Plans: ‘The parents’ or young person’s preferred school or college might be further away from their home than the nearest school or college that can meet the child or young person’s SEN. In such a case, the local authority can name the nearer school or college if it considers it to be appropriate for meeting the child or young person’s SEN. If the parents prefer the school or college that is further away, the local authority may agree to this but is able to ask the parents to provide some or all of the transport funding.’

Transition - Mental Capacity

- General rule – once YP turns 16 parents can no longer make decisions for them
- BUT – section 80 CFA and Part 6 of the Regulations
 - YP aged 16 and other with capacity can decide for themselves
 - Parents or ‘representatives’ (eg Deputies) can make decisions for YP who lack capacity up to age 25
 - See Annex 1 of Code of Practice for (short) summary
- Only applies to decisions under CFA

Transition - Mental Capacity (2)

The principles

– Section 1 MCA

- Presumption of capacity
- ‘All practicable steps’ to help make decision
- Right to make unwise decisions
- All acts and decisions for person who lacks capacity must be in their best interests
- Requirement for ‘least restrictive’ option

Transition - Mental Capacity (3)

General approach to mental capacity

– Section 2 MCA:

‘a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.’

– Section 3 MCA

- ‘unable’ includes inability to understand or ‘use or weigh’ information

– Section 4 MCA

- Detail in relation to best interests decision making

Mental Capacity (4)

General approach to mental capacity

– Section 5 MCA

- ‘general defence’ for those who (i) reasonably believe a person lacks capacity and (ii) reasonably believes the act is in that person’s best interests

– Complex issues in relation to deprivation of liberty

- Deprivation of Liberty Safeguards – hospital / care home 18+, Court of Protection otherwise

Care Act - Introduction

Care Act 2014

- in force from April 2015
- Abolishes most adult community care statutes
- CSDPA 1970 s 2 remains in force for children (up to 18)
- New scheme for adult care
- New duties around transition
- Suite of regulations, single guidance doc

Care Act – Introduction (2)

- Summary of major changes
 - Well-being duty
 - Single national eligibility threshold
 - Safeguarding
 - Advocacy
 - Carers right to services
 - Portability
 - Application of HRA 1998 to non-state care providers – section 73

Care Act – Well-being duty

- Section 1 – principled approach to adult social care – promotion of well-being
- General duty – to promote individual’s well being – starts with ‘personal dignity’
- Starting point is individual is best placed to judge own well-being
- Guidance suggests comes close to incorporating Article 19 CRPD

Care Act – Market shaping

- Promoting diversity and quality in provision of services – section 5
 - LAs must ‘promote the efficient and effective operation of a market in services for meeting care and support needs’
 - Outcome – that people with care and support needs will have
 - A variety of providers to choose from
 - A variety of high quality services to choose from
 - Sufficient information to make an informed decision

Care Act – Transition

- Sections 58-66 – transition to adult care and support
 - Assessments of children – ss58-59
 - Assessments of children’s carers – ss60-61
 - Power to provide services to carers – s62
 - Assessments of young carers – ss63-64
 - Continuity of services – s66

Care Act – Transition (2)

- Continuity of services – s66
 - New section 17ZH inserted into Children Act 1989
 - Must continue to provide services post-18 until Care Act assessment(s) completed
 - New section 17ZI
 - Must continue to provide services where EHC Plan no longer maintained until Care Act assessment completed
 - New section 2A inserted into CSDPA 1970
 - Same as section 17ZH above (services must continue)

Care Act – Assessment

- Sections 9-13 (section 9 – adults; section 10 – carers)
- Very low threshold for duty to assess
 - Appearance of need for (care and) support
- Focus on well-being and outcomes
- Carer’s assessment includes whether willing to provide care (section 10(5)(b))
- See further Assessment Regulations

Care Act – Eligibility

- Eligibility regulations – disabled people
 - Needs arise from or related to physical or mental impairment or illness
 - As a result adult unable to achieve two or more outcomes
 - As a consequence – significant impact on well-being
 - Unable – means in essence ‘finds difficult’...
 - Significant – more than minor or trivial?

Care Act – Eligibility (2)

- Eligibility regulations – carers
 - Needs arise as a consequence of providing necessary care (see guidance)
 - Effect of carers needs is:
 - Deterioration in carer’s physical or mental health (actual or risk); or
 - Unable to achieve one or more specified outcomes
 - Consequence – significant impact on carer’s well-being

Care Act – Care Planning

- Section 8 – ways in which needs can be met
- Section 18 – duty to meet needs (adult)
- Section 20 – duty to meet needs (carers)
- Section 24 – next steps duties:
 - prepare a care and support plan or support plan
 - tell the adult which (if any) needs may be met by direct payments, and
 - help the adult with deciding how to have the needs met.

Care Act – Care Planning (2)

- Section 25 – care / support planning
 - Specify needs
 - Specify which needs meet the eligibility criteria
 - Specify needs LA is going to meet and how it is going to meet them
 - Include personal budget
 - Includes advice and information on what can be done to meet or reduce needs and prevent the development of future needs
- Duty to take all reasonable steps to agree plan

Care Act – Personal Budgets

- Section 26 – Personal Budgets
 - Statement which specifies
 - Cost to LA of meeting needs which it is required or decides to meet
 - Amount the adult must pay towards that cost
 - If there is a sum the LA must pay, that amount
 - May also specify other sums of public money available, for example
 - Housing
 - Health care
 - Welfare

Care Act – Direct Payments

- Sections 31-33 – Direct Payments
 - Adults with capacity – section 31
 - Duty if four conditions met
 - Adults without capacity – section 32
 - Duty if five conditions met
 - Regulations – section 33
 - Direct Payment Regulations
 - Conditions on use of DPs – Regulations 3-4
 - Process requirements – Regulation 5
 - Reviews – Regulation 7
 - Harmonisation with Health (not education) – Regulation 10

Care Act – Charging

- Sections 14-17 – charging and assessing finances
 - Section 14 – power to charge for meeting needs under sections 18-20
 - Limited by reference to minimum income requirement
 - *Section 15 – cap on care costs*
 - *LAs may not charge if total costs accrued exceeds cap*
 - *Section 16 – cap to be adjusted annually*
 - Section 17 – assessment of financial resources
 - See further Charging Regulations

Care Act - Advocacy

- Sections 67-68
 - Section 67 – advocates must be involved in assessment and care planning where
 - Individual has substantial difficulty in one or more areas
 - No appropriate person to represent and support
 - Role of advocate – to ‘represent and support’ for purpose of ‘facilitating...involvement’
 - Section 68 – safeguarding enquiries and reviews
 - Advocacy Regulations (No 2) – requirements re qualifications of advocates and process

Care Act - Safeguarding

- Safeguarding
 - Sections 42-47 – first statutory provisions
 - Section 42 – duty to make enquiries ‘to decide whether any action should be taken in the adult's case’ (but no duty to act) where reasonable cause to suspect:
 - Needs for care and support
 - Experiencing or at risk of abuse or neglect
 - As a result unable to protect himself
 - See Guidance at 6.56 / 14.91 re LA response

Dispute resolution

- Tribunal (if appeal right exists)
 - Social care and health pilots – effective remedy?
- Formal complaint
 - Children Act complaints process
 - NHS complaints process
 - Ombudsmen (LGO / PHSO)
- Judicial review
 - Disabled CYP will often be eligible for legal aid
 - Specialist advice required asap

Conclusions

- Law that now reflects good professional practice
- Some elements come with significant resource implications – EHC Plans, rights to services for carers, advocacy
- Other areas require new ways of thinking – well-being principle
- Real opportunity despite context of cuts

Steve Broach

Monckton Chambers

email

sbroach@monckton.com

twitter

@stevebroach

blog

rightsinreality.wordpress.com

The logo for Monckton Chambers is displayed within a dark red rectangular background. It features a large, white, stylized letter 'M' on the left. To the right of the 'M', the word 'MONCKTON' is written in a white, uppercase, sans-serif font. A thin white horizontal line is positioned below 'MONCKTON'. Underneath this line, the word 'CHAMBERS' is written in a smaller, white, uppercase, sans-serif font, with wide letter spacing.

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