

Care and Support from a Local Authority for Children & Young Persons

What legislation regulates entitlement to children's social care?

Primarily the Children Act 1989, the Chronically Sick & Disabled Persons Act 1970 and the Children and Families Act 2014.

When must a Local Authority assess a child or young person's needs?

A Local Authority has a duty to safeguard and promote the welfare of children within their area if they are 'children in need'. If a child is disabled, he or she is automatically a 'child in need'. Once a Local Authority is aware of a 'child in need', an assessment to determine whether the provision of care and support is 'appropriate' and/or 'necessary' must be completed.

How does a Local Authority determine whether support is 'appropriate' and/or 'necessary'?

Through the use of an eligibility criteria which a Local Authority is lawfully permitted to develop in order to prioritise the provision of services based on need.

The criteria should:

- Include an explanation in everyday language of how services are allocated.
- Take into account the impact of disability on children and families in order to comply with the duty to safeguard and promote the welfare of children.
- Have been developed through consultation.
- Comply with the Public Sector Equality Duty.

Where can I access information on a Local Authority's eligibility criteria?

Within the Local Offer usually available on the Local Authority's website.

What if the eligibility criteria is not met?

It may still be possible to qualify for care and support if the failure to provide services leaves the disabled child and their family at significant risk of harm.

Duty to provide services

If care and support is identified to be 'necessary' and/or 'appropriate', the support must be arranged regardless of cost. The Local Authority therefore has a duty to provide services.

The Assessment Process

Guidance specifies that an assessment must:

- Be acknowledged within 1 working day and completed within a maximum of 45 working days of a referral being received.
- Be completed by a social worker.

- Ensure interim services are commissioned before the conclusion of the process where any particular needs are identified at any stage of the assessment process.
- Take into account and be informed by the wishes and feelings of the child or young person, and family views.
- Obtain specialist expertise if a disabled child has communication difficulties to facilitate identifying their wishes and feelings.
- Investigate the child or young person's developmental needs (considering health, education, emotional and behavioural development and self-care skills), parenting capacity (ensuring safety), and family and environmental factors (housing, family's social integration and community resources).

Every assessment should reflect the unique characteristics of the child or young person within their family and community context.

What does Early Help mean?

Some Local Authorities may offer Early Help which is a scheme designed to identify those in need of support earlier and facilitate quick access to provision. Early Help cannot however be used to escape the duty to complete a full needs assessment.

What types of services can be provided under the Children Act 1989?

- Respite care and/or short breaks away from the home. For example, in a residential unit, hospice, or to meet a crisis.
- Short breaks for parents or carers.
- Direct payments to enable the family to purchase the support required, as identified in the needs assessment.

What types of services can be provided under Section 2 Chronically Sick & Disabled Persons Act 1970?

- Practical assistance in the home. For example, domiciliary care which cannot be used to meet health needs.
- Home-based short breaks.
- Wireless, television, library or similar recreational facilities. For example, recreational equipment such as a computer or games console.
- Recreational and/or education facilities. For example, community based activities such as day centres or after school clubs, or recreational support activities identified as important to a child or young person's development and sense of wellbeing.
- Travel and other assistance. For example, travel requirements to enable a disabled child or young person to access recreational or education facilities.

- Home adaptations, fixtures and fittings. For example, if adaptation requirements are identified, a Local Authority should assist the family with a Disabled Facilities Grant application.
- Holidays, meals and telephones.

Duty to prepare a Care Plan

If an assessment identifies needs, a care plan, known as a 'child in need plan' must be prepared. Guidance from the Local Government Ombudsman specifies that:

- A 'child in need plan' must be more than a merely descriptive document.
- It must spell out with precision what the child's needs are, what the impact of the disability on the carer(s) is, and whether the child and/or carer(s) needs can be met both now and in the future.
- It must identify what is to be done to ensure the child's needs are met, by whom and when.
- If a direct payment is to be made, it must specify precisely what need(s) the direct payment is intended to meet, why the amount of the direct payment is considered appropriate, and what the intended outcome(s) will be.

Is care and support means tested?

Yes. A Local Authority has the power to charge for services provided; however, it is rare they do so in practice.

How does a Local Authority determine whether to charge for services?

A Local Authority may recover '*such charge as they consider appropriate*' and can take into account the financial circumstances of the parent or child. No person can be charged if in receipt of income support or a range of other benefits. If charges are to be levied, they must be calculated based on what a person can reasonably be expected to pay.

What is a Personal Budget? What is the aim? How can it be managed?

Entitlement to services often takes the form of a personal budget. This means an amount of money identified by a Local Authority to deliver the provision detailed in the care plan. The aim is to secure care provision in a more personalised way. The ways a personal budget can be managed include: an arrangement or notional budget, a third party arrangement, a direct payment, or a combination of all of these mechanisms.

Annual Reviews

A Local Authority must review a care plan within 12 months from the date the plan was issued, and annually thereafter.

An unplanned review and re-assessment of need can be triggered if there is a material change in a disabled child or young person's needs.

Importantly, an Annual Review should not be used as a mechanism to apply arbitrary cuts to a personal budget.

How can decisions by a Local Authority be challenged?

Decisions such as: a refusal to complete a needs assessment, concluding it is not 'necessary' or 'appropriate' to provide services, a refusal to re-assess when there has been a material change in need, a refusal to agree a personal budget sufficient to meet need, or to cut provision resulting in urgent, unmet need are challengeable. This may be through a Complaint to the Local Authority and/or Local Government Ombudsman, or by way of an Judicial Review application.

What issues commonly arise?

- Disagreements can arise in relation to a Local Authority's duty to assess need and whether the provision of services is 'necessary' and/or 'appropriate'.
- Inadequate needs assessments fail to properly identify all of a child or young person's needs, which in turn can impact the provision of services decision or lead to a defective care plan incapable of delivering the required support.
- Personal budgets are insufficient to meet assessed needs.
- Children or young persons with complex needs who are not eligible for a package of Continuing Care, struggle to access higher cost funding to ensure the actual cost of meeting complex needs is met.
- Annual reviews are used to apply arbitrary cuts to personal budgets, which sometimes leaves children and families at risk due to urgent, unmet needs.
- Once a personal budget has been agreed, care packages may break down.

How can Lester Aldridge assist?

At Lester Aldridge we have significant experience in relation to all aspects of Local Authority funded care packages for children and young persons. We can provide:

- An initial, free consultation to discuss the circumstances of the case and what forms of care and support may be available.
- Advocacy at needs assessments, care & support planning meetings, and resolution meetings where a care package has broken down.
- Needs checklists to support advocacy at assessments and ensure that needs are clearly articulated as part of the assessment process.
- On-going support to negotiate a personal budget, direct payment and implementation of a care package once eligibility for support has been agreed.
- Access to independent experts to help challenge inadequate needs assessments, care packages, and decisions to refuse to provide care and support.
- Support to challenge or appeal decisions made by a Local Authority.
- Advice at each key stage.