



Disabled Children's Social Care – Briefing #5

s.17 Children Act 1989 and s.2
Chronically Sick and Disabled
Persons Act 1970

About this briefing

This is one of a series of briefings written by the Council for Disabled Children and Research in Practice. These have been developed to help practice leaders and service managers promote greater understanding across the children's workforce of the complex and often confusing legal and policy landscape around disabled children's social care.

They accompany the resource [Using a needs-led eligibility framework to provide services to disabled children and families](#) (June 2024).

Background

The law and procedures governing social care support for disabled children and their families are notoriously complex (Broach & Clements, 2020, p. 86), with care and support for disabled children governed by a patchwork of different legislation. This has contributed to widespread confusion among families and practitioners as to disabled children's entitlements to support under the law.¹

But although disabled children and their families are affected by a range of legislation, the 'key elements' (Broach & Clements, 2020, p. 86) of the legislative regime relating to the provision of social care for disabled children are the *Children Act 1989* and the *Chronically Sick and Disabled Persons (CSDPA) Act 1970*.

In particular, the relationship between section 17 of the *Children Act 1989* and section 2 of the *CSDPA 1970* is key to understanding why disabled children are treated differently under the law to other children 'in need'.

Section 17 Children Act 1989

Section 17(1) of the *Children Act 1989* places a general duty² on local authorities to safeguard and promote the welfare of children 'in need' within the local authority's area by 'providing a range of services appropriate to those children's needs'. As far as is possible, support should enable children to be brought up by their own families.

Under section 17(10) of the *Children Act 1989*, a child is 'in need' if:

- a) *he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by a local authority under this Part;*
- b) *his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services; or*
- c) *he is disabled.*

This means that every disabled child is automatically a child 'in need' (Broach & Clements, 2020, p. 88). Unlike other children, a disabled child faces no additional requirement other than their disability to meet the definition of being 'in need'.³ Every disabled child is therefore entitled to an assessment of their support needs under section 17.

¹ In 2023 the government asked the Law Commission to begin a review of the law governing disabled children's social care (see briefing #1 'The Law Commission's review'). The long-term aim is to modernise the law to create a fairer system for disabled children and their families.

² For an explanation of the difference between a general duty and a specific duty, see briefing #4 'Understanding powers, duties and entitlements'.

³ For an explanation of how disability is defined under the law, see briefing #7 'How does the law define "disabled" in relation to children?'.

Purpose of services for disabled children

The purpose of providing services to disabled children (under the general section 17 duty) is set out in schedule 2 para. 6 of the *Children Act 1989*. The purpose is to:

- > Give disabled children the opportunity to lead lives that are ‘as normal as possible’.
- > ‘Minimise the effect’ of their disabilities.
- > Provide breaks for those who care for disabled children so that they can continue to care for them or do so ‘more effectively’.

Duty to provide services

However, the duty to provide a range of ‘appropriate’ services under s.17(1) is a general duty to provide for the local authority’s population of children in need. An individual disabled child cannot rely on section 17 to claim entitlement to a particular service.

This duty has been held by the courts not to be owed to each individual child in need but generally to all children in need in the local authority’s area. Therefore, a child in need cannot rely on section 17 alone to claim a right to a service. (Broach & Clements, 2020, p. 75)

Moreover, the *Children Act 1989* does not prescribe a list of services that should be provided, nor does it specify what an ‘appropriate’ level of services would be. This means local authorities have considerable discretion in deciding what services they should provide to support disabled children and their families. This has contributed to significant variation in the type and levels of support provided by different local authorities.

While there is a ‘general expectation’ in law and government guidance that a disabled child who is assessed as having ‘substantial needs’ will have those needs met by the provision of services, the ‘longstanding gulf between need and available resources’ means not every assessed need can be met (Broach & Clements, 2020, p. 103).

Therefore, it is important to understand when there is a **specific duty** to meet a disabled child’s needs following an assessment. The key to that understanding is the relationship between section 17 of the *Children Act 1989* and section 2 of the *CSDPA 1970*.

Section 2 CSDPA 1970

Section 2 of the *CSDPA 1970* requires local authorities to provide a range of specified services to support disabled children and their families. Section 2 also places a specific duty⁴ on local authorities to provide one (or more) of those services to a disabled child if the local authority accepts (via an assessment) that the service is ‘necessary’ to meet the needs of that child.

Those services are defined in broad categories using rather dated language that reflects the time when the legislation was enacted.⁵ The categories of provision can be summarised as:

- > Practical assistance in the home – for example, help with personal care, such as bathing, toileting or feeding.⁷
- > Home-based short breaks.
- > Access to recreational and educational facilities in the community, which may include community-based short breaks services.
- > Help with travel to access facilities in the community.
- > Adaptations to the child’s home – for example, installation of ramps, grab rails or wheelchair-accessible showers.
- > Help with the cost (or provision) of holidays, meals and/or telephones or other communication devices. (Broach & Clements, 2020, pp. 113–118)

The broad range of services available under section 2 means that most social care services for disabled children are provided under the *CSDPA 1970* (Broach & Clements, 2020, p. 111).

An enforceable duty

Unlike the **general duty** created by section 17 of the *Children Act 1989*, the duty set out in section 2 of the *CSDPA 1970* is a **specific duty**. This means the duty is legally enforceable: once a local authority accepts (following an assessment) that a service is ‘necessary’ to meet a particular disabled child’s needs, then that service must be provided.

Provision must meet the child’s needs in full. For example, if a child is assessed as needing eight hours’ short-break care a week, then the local authority must provide eight hours. That support cannot be reduced (e.g. to six hours a week) and it cannot be delayed (e.g. by placing the child on a waiting list) by any financial constraints that the local authority is facing (Broach & Clements, 2020, p. 113). In other words, the duty is absolute.

⁴ The difference between a specific duty and a general duty is explained in briefing #4 ‘Powers, duties and entitlements’.

⁵ As part of the Law Commission’s review of the law around disabled children’s social care, the government has asked the Commission to look at the outdated language and definitions that underpin the current legislative framework (see briefing #1 ‘The Law Commission’s review’).

Assessment

For disabled children and their families, assessment is ‘the gateway to services and support’ (Broach & Clements, 2020, p. 87). The assessment duty (p. 95 et seq.) is established by the *Children Act 1989*, and guidance on assessment is set out in the statutory guidance *Working Together to Safeguard Children* (most recently updated in December 2023 – HM Government, 2023).

The *Working Together* guidance can be perceived as ‘problematic’ in that it’s primarily concerned with safeguarding rather than meeting the needs of disabled children and their families (Broach & Clements, 2020, p. 97). For many families of disabled children, this is an ongoing source of frustration and resentment (see briefing #2 ‘Families’ experiences of social care’).

Nevertheless, *Working Together* does make clear that in carrying out an assessment of a disabled child’s support needs under section 17 of the *Children Act 1989*, the local authority must decide whether support is ‘necessary’ – and, if it is, whether that support is among the provision listed under section 2 of the *CSDPA 1970*.

The local authority must also consider whether it is necessary to provide support under section 2 of the Chronically Sick and Disabled Persons Act 1970. Where a local authority is satisfied that the identified services and assistance can be provided under section 2 of the Chronically Sick and Disabled Persons Act 1970, and it is necessary in order to meet a disabled child’s needs, it must arrange to provide that support. (HM Government, 2023, para. 189)

Eligibility criteria

The decision as to whether or not support is ‘necessary’ should be based on ‘eligibility criteria’ developed by the local authority – i.e. the process, which must be transparent, by which the local authority decides whose needs to prioritise (see Briefing #6 ‘Eligibility criteria and disabled children’s social care’).

Key points

- > The relationship between a local authority's duties under section 17 of the *Children Act 1989* and section 2 of the *CSDPA 1970* must be understood to appreciate why disabled children are treated differently by the law to other children 'in need'.
- > Under section 17(10) of the *Children Act 1989*, every disabled child is automatically a child 'in need' and so is entitled to an assessment of their need for support. But while there is a general expectation that a disabled child's needs will be met, local authorities do not have the resources to meet every assessed need. So it is important to understand when there is a **specific duty** to meet a child's assessed needs.
- > Section 17(1) places a duty on each local authority to provide 'appropriate' services for its local population of children in need. However, this is a **general duty** only. An individual disabled child cannot rely on section 17 to claim a right to a particular service. Moreover, the *Children Act 1989* does not specify what services should be provided, nor what an 'appropriate' level of services would look like.
- > This **general duty** is supplemented by section 2 of the *CSDPA 1970*, which requires local authorities to provide a range of specified services for disabled children. Section 2 also creates a **specific** right for a disabled child to receive one of those services if the local authority accepts (following an assessment) that the service is 'necessary' to meet that child's needs.
- > To make this decision, local authorities are required to develop fair and rational 'eligibility criteria' that set out clearly how needs will be prioritised. In developing their criteria, a local authority can take its resources into account. But once it has accepted that it is 'necessary' to meet a child's needs, that support must be provided.

References

Broach, S. (2014, August 25). CSDPA – the mystery duty for disabled children's social care. *Rights in Reality*. <https://rightsinreality.wordpress.com/2014/08/25/csdpa-the-mystery-duty-for-disabled-childrens-social-care/>

Broach, S., & Clements, L. (2020). *Disabled Children: A Legal Handbook* (3rd edition). Legal Action Group. <https://councilfordisabledchildren.org.uk/resources/all-resources/filter/inclusion-send/disabled-children-legal-handbook-3rd-edition>

Council for Disabled Children & Research in Practice. (2024). *Providing services to disabled children and families using a needs-led eligibility framework*. [Using a needs-led eligibility framework to provide services to disabled children and their families: Strategic Briefing \(2024\) | Research in Practice](#)

HM Government. (2023). *Working Together to Safeguard Children 2023: A guide to multi-agency working to help, protect and promote the welfare of children*. Department for Education. <https://www.gov.uk/government/publications/working-together-to-safeguard-children--2>

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