



Disabled Children's Social Care – Briefing #4

Understanding powers,
duties and entitlements

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). Care and support for disabled children is governed by a patchwork of different legislation, and children and their families are affected by a wide range of domestic and international law (p. 58).

This complexity has led to widespread confusion among children's workforce practitioners and families of disabled children (see Briefing #2 'Families' experiences of social care'). This in turn has led to the government asking the Law Commission to undertake a wholesale review of the law governing children's social care (see Briefing #1 'The Law Commission's review').

Context

In order to have a clear understanding of children and families' rights and entitlement to support and services, it's important to know:

1. The hierarchy of domestic law (see briefing #3 'Hierarchy of the law').
2. The difference between a local authority having the **power** to do something and a **duty** to do something.
3. The distinction between a **general duty** and a **specific duty**, as this directly affects children and families' entitlement to support..
4. How eligibility criteria should work under the law (see briefing #6 'Eligibility criteria and disabled children's social care').

This briefing explains points 2 and 3.

Understanding different types of duties and powers and how they operate is critical to determining whether disabled children and their families have an entitlement to a particular service or benefit (Broach & Clements, 2020, p. 74).

Powers and duties

Like all public bodies, local authorities are ‘creatures of statute’ (Broach & Clements, 2020, p. 74). In broad terms, this means they can only do things that they are either permitted to do (a power) or required to do (a duty) by an Act of Parliament or secondary legislation (p. 74) (see Briefing #2 ‘Hierarchy of the law’).

- > A **power** is indicated in legislation by the use of words such as ‘may’ or ‘can’ and doesn’t always have to be used. A power must be exercised fairly and reasonably (see below).
- > A **duty** is indicated in legislation by words such as ‘must’ and ‘shall’. Where a duty is prescribed in law, that duty does have to be met. (Broach & Clements, 2020, p. 58)

Exercising powers ‘fairly, rationally and reasonably’

Where a local authority has a power to provide services (rather than a duty to do so) that power must always be exercised ‘fairly, rationally and reasonably’. A local authority cannot decide that it will never use a power, and it cannot decide that it will not use a power in relation to particular groups, such as children with autism (Broach & Clements, 2020, p. 75):

... if Parliament has given a public body a power to do something, then each time the opportunity arises when it could use this power, it must consider whether or not to exercise it. The public body cannot decide never to use the power, or never to use it for the benefit of certain groups of people, for to do so would be to act against the will of Parliament. (Broach & Clements, 2020, p. 75)

A ‘basic principle’ of common law is that local authorities ‘must always give consideration to exercising their powers’ and must not adopt policies in relation to a statutory power that pre-determine the outcome (Broach and Clements 2020, p.61).

A local authority may also sometimes have to make use of a power in order to avoid what would otherwise be a breach of a person’s human rights under the law (Broach & Clements, 2020, p. 75).

What this means in practice is explored further in Briefing #6.

General duty vs specific duty

It is also important to understand the distinction between a **specific** duty and a **general** duty, as this determines the extent to which a local authority service must be provided (Broach & Clements, 2020, p. 58–60).

- > Where a local authority has a **specific duty** to provide a service, a child has an individual right to receive that service.
- > Where there is a **general duty** (sometimes also called a ‘target’ duty)¹ to provide services to a local population group, then that duty does not create an individual right to receive a particular service.

This distinction is crucial to understanding the current law relating to disabled children and their families and, in particular, to understanding an individual disabled child’s entitlement to a service. So:

¹ General duties are also sometimes described as ‘target’ duties. This means that Parliament has in effect set local authorities a ‘target’, but Parliament did not intend a failure to meet that target to give rise to a legal challenge by an aggrieved person (Broach & Clements, 2020, p. 75).

- > Section 17(1) of the *Children Act 1989* places a general duty on local authorities to safeguard and promote the welfare of children ‘in need’ within the local authority’s area.
- > Under section 17 of the *Children Act 1989*, all disabled children are **automatically** children ‘in need’. Unlike other children, a disabled child faces no additional requirement (other than their disability) to meet the definition of a child ‘in need’. A local authority has a statutory duty to carry out an assessment of each disabled child’s need for support. (See also Briefing #7 ‘How does the law define “disabled” in relation to children?’).
- > Section 17(1) of the *Children Act 1989* also creates a **general duty** for local authorities to provide services for its local population of children in need. Local authorities are required to provide ‘a range of and level of services appropriate to those children’s needs’. As this is a general duty to provide services for a population group, an individual child cannot claim an automatic entitlement to receive support under section 17.
- > Section 2 of the *Chronically Sick and Disabled Persons Act (CSDPA) 1970* requires local authorities to provide a range of prescribed services to meet the needs of disabled children.
- > Section 2 also places a **specific duty** on local authorities to provide a disabled child with one or more of those prescribed services where the local authority accepts that the service is ‘necessary’ to meet the child’s needs.

Local authorities’ duties to disabled children under section 17 of the *Children Act 1989* and section 2 of the *CSDPA 1970*, and the relationship between them, are explored in more detail in Briefing #5.

Key points

- > Understanding different types of legal duties and powers is critical to determining whether disabled children and their families have an entitlement to a particular service or benefit.
- > A power is indicated in legislation by the use of words such as 'may' or 'can' and doesn't always have to be used. A duty is indicated in legislation by words such as 'must' and 'shall' and does have to be met.
- > If a local authority has a power (rather than a duty) to provide services, that power must be exercised 'fairly, rationally and reasonably'. For example, a local authority cannot decide never to use a power, nor can it decide to use a power only for a particular group or groups of children.
- > It is important to understand the distinction between a **specific duty** and a **general duty**, as this determines the extent to which a service must be provided. Where a local authority has a specific duty to provide a service, a disabled child has an individual right to receive that service; but a disabled child cannot rely on a general duty to provide services to create an individual entitlement to a particular service.

References

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>

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