newlife
THE CHARITY FOR DISABLED CHILDREN

BHTA
British
Healthcare
Trades
Association

Equipment or adaptations for disabled children in England

What the law says – A guide for professionals





The law places duties and responsibilities on a range of authorities and public bodies to assist disabled children and their families

Introduction

This leaflet has been produced by the Children's Equipment Section of the British Healthcare Trades Association (BHTA). It is designed to help professionals understand the legal rights families and carers have to financial assistance to pay for equipment, support or adaptations required by their disabled children.

The legal picture is complex and unfortunately there is not one piece of legislation which covers all circumstances. This leaflet is designed to help you understand:

1. What key legislation exists to provide rights for disabled children and young people and their families.

2. Which bodies are legally responsible for the various forms of provision.

3. Where families can get support and advice if a child or young person is not receiving what they are legally entitled to.

Health and social services have a legal duty to co-operate with one another in order to "secure and advance the health and welfare" as well as to "safeguard and promote the welfare of children".

National Health Service Act 2006 – Section 82
Children Act 2010 – Section 10

Most of the information provided here applies to children and young people up to the age of 18, living in England, who have a physical or learning disability or a mental health condition.



What does the law say?

The law places duties and responsibilities on a range of authorities and public bodies to assist disabled children and their families. The law applies to all health, social services and education providers, including any private organisations providing such services – for example NHS services in private hospitals.

An identifiable diagnosis is not required – disability is determined by assessment. This can be helpful, as arriving at a diagnosis may not be easy and may take many years and the involvement of a range of professionals.

Children Act 1989 – Section 17(11)
Regardless of assessment or diagnosis, a child is "in need" if they meet the criteria for disability as follows. They are:

- Blind.
- Deaf.
- Unable to speak.
- Have a mental disorder of any kind.
- Are subtantially and permanently handicapped by illness, injury or congenital deformity, or such other disability as may be prescribed.

Mental Health Act 1983 – Section 1(2)
The definition is broad and includes a "mental disorder of any kind", defined in the Mental Health Act as "any disorder or disability of the mind".



Children Act 1989 – Section 1(11)
This definition includes learning disability and therefore a child with a recognised learning disability will be a disabled child for the purposes of the Children Act.

All professionals involved in the care of a child or young person have an obligation to inform the Local Authority to consider that child to be "in need".

Right to an assessment of need

Local authorities must, by law, carry out an assessment of a child's needs and maintain a register of how many children "in need" live in that authority.

The assessment should be carried out as follows:

- It should take place within 45 days of the point of referral.
- The child, their family and carers must be involved in the assessment process and kept informed about decisions.
- The purpose should be made clear to the family and the child.
- There must be liaison with other professionals who are involved with the family and the child.
- The result of the assessment and any plan resulting from it, should be shared with the family and the child.

Who is responsible and what can be expected?

Duties of Local Authorities
Every local authority has a duty to safeguard and promote the welfare of children within their area who are "in need". This should be done by providing a range and level of services appropriate to the needs of those children.

Providers of goods and services, including public bodies, must not directly or indirectly discriminate against those with a disability. They also have a responsibility to make "reasonable adjustments" to address disadvantage.

In most cases it is the Local Authority which has the primary responsibility for meeting the needs of disabled children and bringing in other public authorities or agencies where appropriate. It is recognised that many disabled children and young people will require input from a range of agencies to achieve the best outcomes.

Assessing need

Every child is entitled to an assessment of their needs. Section 17 of the Children Acts 1989 – Para 1 (1), Schedule 2.

Needs should be assessed for each child on an individual basis via a multi-agency assessment (usually led by a Social Worker) under section 17 of the Children Act 1989 states that local Authorities have a duty to find out about the child's wishes and feelings and take account of them when planning the provision of services and equipment.

In addition, the Chronically Sick and Disabled Persons Act 1970, requires the Local Authority to assess needs in the following areas:

- Practical assistance in the home
- Provision of recreational and educational facilities
- Travel provision
- Home adaptation
- Meals and special equipment.

The purpose of the assessment is to find out about the child's needs, and consider what might help improve the quality of his/her life. An informed decision should be made about the nature of any action needed and which services or equipment should be provided. This must be in the child's best interests and informed by the evidence available and allow for exceptionality. Failure to allow for exceptionality could amount to a fettering of discretion (blanket ban) and be challengeable in law.

The Disabled Facilities Grant
If the home in which a child or young person lives requires adaptions to meet their needs, their family may be entitled to a Disabled Facilities Grant, (DFG), to help with the cost of the adaptation. Disabled children under 18 can get a grant of up to £30,000, without their parents' income being considered. More information is available from the local authority. www.gov.uk/disabled-facilities-grants



Duties of the NHS

For children and young people with particularly severe or complex needs who are eligible for NHS Continuing Care Funding, the primary responsibility for meeting their needs lies with the NHS. This can, however, be in conjunction with the local authority.

The NHS has a range of duties which apply to the general population and a range of policy statements that specifically relate to the care of children, including a National Service Framework for Children. The NHS has a statutory duty to provide the same standard of treatment to disabled children as to any other patient.

Clinical Commissioning Groups (CCG's) are responsible for planning and purchasing local healthcare services, including those for children and are accountable for provision for disabled children. For specialist services, where local commissioning is not suitable, the responsibility lies with NHS England.

There are specific duties on local authorities for children who are "Looked After". The Childrens Act 1989 Guidance and Regulations Volume 4: Fostering Services states "They must make sure that each disabled child... is provided with any aids or equipment required by particular health needs or disability".

Education, health and care plans

Education Health and Care Plans (EHC plans) are for children and young people (up to 25 years) who have a physical or learning disability.

Some children and young people with disabilities and/or special educational needs will need more support than a mainstream education setting (schools, colleges, nurseries) can offer.

These children are entitled to an Education, Health and Care (EHC) needs assessment, to work out how much help they need and what form the help will take.



Children and families have the right to have their views considered and to be fully involved in the assessment process.

An EHC Needs Assessment is the first step to getting an Education, Health and Care (EHC) plan. It is a legal process carried out by the Local Authority and should not be confused with other assessments that teachers, GP's or other professionals may carry out for that child.

Children and young people are legally entitled to receive the support, equipment and services detailed in their EHC Plan.
Children and Families Act, 2014

Allocating funding

Criteria is applied to define who will get funding for equipment, services or adaptations. The application process must not put obstacles in the way of families who are trying to get help for their child. The following factors apply to the process:

- The application process and the way decisions are made must be fair, transparent and reasonable.
- The panel making decisions for the assessment, must act according to public law, be transparent, and sufficiently qualified to decide, especially if the panel may disagree with a clinician or social worker.
- In some circumstances there may be needs that can only be met by a particular resource and in that case the local authority must provide it.
- Most importantly, once a need is identified, it is necessary to meet the need to ensure that the eligibility criteria are met.
- A lack of resources or the fact that the authorities preferred method of meeting the need is unavailable, cannot be a legal justification for not doing so.

A failure to follow these requirements could justify a legal challenge. Statutory Guidance, Working Together to Safeguard Children, March 2013

Complaints to local authorities and public bodies

All children, families and carers have the right to complain if they feel their child is not receiving the help they are entitled to. Local authorities must have a complaints procedure regarding the assessment and provision of equipment for disabled children.

The Patients Advice and Liaison Service (PALS) offers confidential advice, support and information on health-related matters.
They provide a point of contact for patients, their families and carers.
To find your local PALS visit:
https://www.nhs.uk/common-health-questions/nhs-services-and-treatments/what-is-pals-patient-advice-and-liaison-service/

If the local authority fails to consider or resolve the matter, then the Local Government Ombudsman has the power to deal with the complaint.

The NHS must also address complaints, and must provide support for people to make a complaint if they request this. Unresolved NHS complaints can be referred to the Parliamentary and Health Service Ombudsman.
www.ombudsman.org.uk

Further information

For further information on EHC plans see: https://contact.org.uk/advice-and-support/education-learning/ehc-needs-assessments-(england)/

The legal basis for this document was informed by the report, produced by Newlife, a leading Charity for Disabled Children, entitled, “In the Matter of Provision for Disabled Children, Advice for Newlife (2018),” which sets out the legal framework in more detail. This legal advice, in addition to advice for Wales, Scotland and Northern Ireland, can be found at www.newlifecharity.co.uk

British Healthcare Trades Association
Suite 4.6
The Loom
14 Gowers Walk
London
E1 8PY

Telephone: 020 7702 2141
Email: bhta@bhta.com
Twitter: @wwwbhta
www.bhta.com

Company Limited by Guarantee – Registered in England
No: 154121. VAT Registration No: 702845545.

BHTA is a member of the Confederation of British Industry (CBI) Sectoral Member (T/00026043); a CTSI Corporate Affiliate; and a member of EUROM VI and the Trade Association Forum.

The BHTA is a trade association with members in healthcare and assistive technology, all of whom commit to the BHTA Code of Practice, the only one in this industry to be approved by The Chartered Trading Standards Institute. BHTA member companies operate to higher standards of customer protection than the law requires.

JULY 2019
BHTA EADC0719