

HOW TO ACCESS FREE CHILDCARE



FOR PARENTS OF TWO TO FOUR-YEAR-OLD DISABLED CHILDREN



contact

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Introduction

Families with disabled children often find it difficult to access the free childcare that is available to all three and four-year-olds, and some eligible two-year-olds.

There are many reasons for this: you may not be able to find a childcare provider to suit your child's specific needs, many childcare settings are not inclusive, and many don't offer free childcare at times that are suitable.

This guide is designed to help you understand your rights to free childcare for disabled children, and help you challenge decisions by local authorities and childcare settings if your access to free childcare has been denied.

The guide has been compiled by Irwin Mitchell Solicitors with Steve Broach (barrister at Monckton Chambers) for Contact as part of 'Levelling the Playing Field: the Childcare Campaign for Disabled Children'.



WHAT FREE CHILDCARE IS MY CHILD ENTITLED TO?

The Early Learning and Childcare statutory guidance for local authorities says:

“All children who meet the prescribed criteria are able to take up high quality early education, regardless of their parents’ ability to pay – benefiting their social, physical and mental development and helping to prepare them for school. Evidence shows that regular, high quality early education has lasting benefits for all children.”

Three and four-year-olds

In England, your three or four-year-old is entitled to 570 hours of free early education every year. The gov.uk website says:

“All three to four-year-olds in England can get 570 hours of free early education or childcare per year. This is usually taken as 15 hours each week for 38 weeks of the year.”

The Early Learning and Childcare statutory guidance (at A2.3) says that as a minimum, you should be able to access your child’s early education in the following ways:

- **5 hours per day, over 3 days of the week**
- **3 hours per day, over 5 days of the week.**

It also says that early education places do not have to be delivered only over 38 weeks of the year (the number of weeks in a school year), or in line with maintained school term dates (A2.4). This means you can ‘stretch’ your hours over more than 38 weeks if your childcare provider offers the free entitlement on a more flexible basis.

You can access your free childcare after your child’s third birthday at the set dates in this table:

Child’s birthday	Date when you can start
1 January–31 March	The beginning of term on or after 1 April
1 April–31 August	The beginning of term on or after 1 September
1 September–31 December	The beginning of term on or after 1 January

Two-year-olds

Some two-year-olds are also entitled to the same number of free hours every year as three and four-year-olds. Your two-year-old will qualify for free early education if they:

- **have a current statement of special educational needs (SEN) or an Education, Health and Care plan**
- **receive Disability Living Allowance at any rate.**

Some two-year-olds may also qualify if your family claims one or more state benefits, for example Income Support or tax credits.

If your two-year-old is eligible, you can access your free childcare on the same dates after their second birthday as shown in the table for three-year-olds.

Extra help for working families

Working families of three and four year olds are entitled to an extra 15 hours of free childcare. This is on top of the 15 hours of free early education for all parents of three and four-year-olds and some two-year-olds.

You will be eligible if:

- You (and your partner where applicable) earn or expect to **earn the equivalent to 16 hours** at National Minimum or Living Wage over the coming three months. This equates to £125.28 a week (or around £6,500 a year) for each parent over 25 years old or £118.08 a week (or around £6,000 a year) for each parent between 21 and 24 years old and £59.20 a week for apprentices in their first year. (Rates for year from April 2018). This applies whether you are in paid employment, self-employed or on zero hours contract.
- You (and your partner where applicable) are **seeking the free childcare to enable you to work**.
- You (or your partner where applicable) are **on maternity, paternity, shared parental or adoption leave**, or if you are on statutory sick leave.

Where one parent meets the income criteria and the other is unable to work because they are disabled, have caring responsibilities or have been assessed as having limited capability to work, they are assessed as though they are in paid work.

Where you are in a 'start-up period' (you are newly self-employed), you do not need to demonstrate that you meet the income criteria for 12 months.

If one or both parents is a non-EEA national, the parent applying must have recourse to public funds.

WHEN WILL I NOT MEET THE CRITERIA?

You will not meet the criteria when:

- **One or both parents have an income of more than £100,000.**
- **You (or your partner where applicable) are a non-EEA national and the parent applying does not have recourse to public funds.**

WHAT HAPPENS IF I LOSE ELIGIBILITY?

You will receive a 'grace period' - this means you will be able to keep your childcare for a short period.

Once the 'grace period' has lapsed, you should be entitled to the universal 15-hour entitlement.

How do I apply for free childcare?

The gov.uk website allows parents to apply for the government's childcare offers, as well as providing details of existing government schemes. You can also find out more from the Childcare Choices website at: www.childcarechoices.gov.uk.



Where can my child go for free childcare?

You can access your free childcare in several different settings, as long as they are registered with Ofsted:

- **nurseries**
- **playgroups or pre-school**
- **childminders**
- **Sure Start Children's Centres.**

You can find Ofsted registered childcare providers on the Gov.uk website. Type in your postcode to find free early education and childcare in your area on the site. You will also find links to local authority websites.

Contact's factsheet 'Help in the early years if your child has additional needs' explains the key parts of the system in England for children aged 0-5, plus information about finding suitable childcare.

Your child's rights to protection against discrimination

The Children and Families Act 2014 and the Special educational needs and disability (SEND) Code of Practice: 0-25 years aim to give disabled children and children with special educational needs greater support, choice and opportunities.

The new SEND Code of Practice details the support that councils, early years childcare providers and schools in England should give to disabled children, and children with special educational needs.

It also says what information local authorities must publish so parents can find out what

support is available. This is called the local offer – usually published on your local authority website.

All early years childcare settings, such as nurseries and pre-schools, which offer free places to two, three and four-year-olds must meet the requirements of the SEND Code of Practice.

They must:

- **involve you and your children properly in decision making, and make sure you get the information and support you need**
- **respond quickly to your child's emerging needs**
- **plan ahead and work towards positive outcomes for your child**
- **focus on inclusive practice – the majority of children who have additional needs are successfully included in mainstream settings, and**
- **coordinate better between services, with new joined-up assessments and plans for children who need support from several different services.**

Local authorities have a legal duty to promote equality of opportunity for disabled children.

The SEND Code of Practice (at 4.37) says:

“When securing funded early education for two, three and four-year-olds, local authorities must promote equality of opportunity for disabled children. This should include securing relevant expertise among early years providers and working with parents to ensure that appropriate provision is in place to enable each child to flourish. Local authorities must also secure sufficient childcare for working parents and must work with providers to plan and manage local provision to meet the needs of families and children in their area.”

YOUR CHILD'S LEGAL RIGHTS

Your child's access to childcare is governed mainly by the Childcare Act 2006. As well as your free early education childcare entitlements, the Act has these sections that are relevant to parents of disabled children:

- **Section 1** – requires local authorities to improve wellbeing and reduce inequalities between young children in their area.
- **Section 3** – requires local authorities to promote childcare to parents who may otherwise not access it – this includes parents of disabled children.
- **Section 8** – gives local authorities a power (this means they can choose to do something but are not required to by a legal duty) to assist any person who provides childcare, including providing financial assistance. So if your child needs an adjustment that goes beyond what is 'reasonable' (see page 6, 'The Childcare Act 2006, Section 6') to allow them to access a childcare service, Section 8 will allow the local authority to meet some or all of the cost.

There may also be a legal duty on local authorities to meet extra costs associated with access to childcare for disabled children under section 2(6) of the Chronically Sick and Disabled Persons Act (CSDPA) 1970. There is more information about this in the second template letter on page 12.

The Childcare Act 2006, Section 6

The most important legal duty in the Childcare Act 2006 is in Section 6, which requires local authorities to make sure there is enough childcare in their area for parents who wish to work, or study in relation to work. This duty applies as far as it is 'reasonably practicable'. This means to the extent that each local authority can afford it.

Section 6(2) also says that local authorities must take into account parents' needs 'for the provision of childcare which is suitable for disabled children'. This duty under Section 6(2) applies to disabled children up to the age of 18.

To comply with this duty, a local authority must know how many disabled children in its area may need childcare. It must also know the amount of childcare provision that is accessible, and whether it meets the needs of disabled children in the area.

The Early Learning and Childcare statutory guidance for local authorities (at B.3) says that local authorities should 'report annually to elected council members on how they are meeting their duty to secure sufficient childcare, and make this report available and accessible to parents.'

The report – usually known as a *Childcare Sufficiency Report* or *Childcare Sufficiency Assessment* – should include a reference to how the local authority is making sure there is enough childcare to meet the needs of disabled children. It should also include details of how any gaps in childcare provision will be addressed. Some local authorities make this report available on their website.

Other legislation

The Childcare Sufficiency Report also helps local authorities to comply with other legislation:

- Under Section 27 of the Children and Families Act 2014 local authorities must consider if there is enough childcare to meet the needs of children and young people in their area.
- Under Section 18 of the Children Act 1989, local authorities must provide day care for children ‘in need’ who are aged five or under and aren’t going to school yet. According to this Act, all disabled children are children ‘in need’.
- The ‘Public Sector Equality Duty’ under section 149 of the Equality Act 2010 requires local authorities to advance equality of opportunity for disabled children (amongst other things). There is no legal duty on local authorities to achieve this, but local authorities must take it into account in all their decision making, including decisions about how much funding to allocate to childcare services.

Barriers to childcare for disabled children

The Early Learning and Childcare statutory guidance for local authorities says (at A1.9) that local authorities should:

“Promote equality and inclusion, particularly for disadvantaged families, looked-after children, children in need and children with disabilities or special educational needs by removing barriers of access to early education and working with parents to give each child support to fulfil their potential. Local authorities must ensure they meet their duties under the Equality Act 2010 when securing early education places.”

Despite this, families with disabled children often find it harder than other families to access suitable childcare.

The scenarios overleaf outline some of the most common barriers, and what can or can’t be done to overcome them.

1. A childcare provider is not willing to offer a childcare place to your disabled child because they say they can't meet your child's needs.

What to consider

- Has the childcare provider complied with its duty to make 'reasonable adjustments' under sections 20-22 of the Equality Act 2010?

What the law says

- Childcare providers must make reasonable adjustments to policies and physical features which put disabled children at a disadvantage compared with non-disabled children.
- Local authorities must also provide auxiliary aids and services to address the barriers disabled children face to access childcare. Guidance from the Equality and Human Rights Commission says this involves 'providing extra aids and services such as providing extra equipment or providing a different, or additional, service.'
- Reasonable adjustments must be provided free of charge to you, the customer.
- However, what it is 'reasonable' to expect a childcare provider to do to meet your child's individual needs will depend to an extent on the size and financial resources of the provider.

2. A childcare provider won't accept your child due to health and safety concerns.

What to consider

- Has the childcare provider considered what reasonable adjustments could be made?
- Are the concerns about health and safety valid?

What the law says

- A childcare provider which refuses to take a disabled child simply because they are disabled is in breach of the bar on direct discrimination under the Equality Act 2010, Section 13. This direct discrimination cannot be justified – it is against the law.

3. You cannot find a registered childcare provider who can offer a suitable service for your child's needs in your area.

What to consider

- Can any group childcare setting make the necessary 'reasonable adjustments' to suit your child's needs?
- Can any home-based childcare setting make 'reasonable adjustments' to suit your child's needs?
- Has your local authority tried to help you to find a suitable childcare setting in your area?

What the law says

- If there is genuinely no suitable childcare in your area that meets your child's needs, you can challenge your local authority for failing to comply with its childcare sufficiency duties under Section 6 of the Childcare Act 2006. That is, making sure there is enough childcare in your area to meet the needs of families with disabled children (see page 6).

4. You have found a childcare provider willing to accept your child, but there is no funding available for intensive support, such as one-to-one care.

What to consider

- Additional funding from a local authority would only be offered if the support your child needs goes beyond what would be considered to be a 'reasonable adjustment'.

What the law says

- The local authority may have to fund the additional support under Section 8 of the Childcare Act 2006 or Section 2 of the CSDPA 1970, but this is only likely to apply if the childcare provider has already made 'reasonable adjustments'.

5. Funding for intensive support, such as one-to-one care, is available but does not cover the full free childcare entitlement (for example, less hours or term-time only)

What the law says

- The local authority and/or childcare provider are likely to be in breach of the Equality Act 2010, as disabled children are being treated less favourably than non-disabled children. This may be discrimination arising from disability under section 15 of the Equality Act 2010. It is also likely the local authority and/or childcare provider would be in breach of their legal duty to make reasonable adjustments.

6. Funding is not available for adjustments to the physical environment, specialist equipment, specialist training such as administering medicines, manual handling, communication methods, and so on.

What the law says

- Again, the local authority and/or the childcare provider may be in breach of their reasonable adjustments duties. If you cannot access this funding it may also be discrimination arising from disability.

7. You can find a childcare provider who is willing to accept your child but you cannot meet their extra conditions to get your child a place.

What to consider

- Some childcare providers only offer full time places or a package, so families have to pay for extra hours they can't afford to access their free childcare entitlement.

What the law says

- If you aren't able to pay for extra hours, you can ask the childcare provider to make reasonable adjustments under the Equality Act 2010. They can only ask you to pay for the extra hours in exceptional circumstances. If this is the case, you can complain to the local authority or Local Government Ombudsman.

In all these scenarios it is important to remember that putting disabled children in a less favourable position than non-disabled children when they access childcare may:

- breach Article 14 of the European Convention on Human Rights (ECHR), the right to enjoy all human rights without discrimination
- come within the scope of the right to respect for family and private life, protected by Article 8 of the ECHR, and/or
- within the scope of the right to education in Article 2 of the First Protocol
- go against the United Nations Convention on the Rights of the Child (UN CRC), which says disabled children have the right to have their best interests treated as a primary consideration in all decisions affecting them (Article 3), and
- breach disabled children's right to access to childcare under Article 18 of the UN CRC
- also breach the Public Sector Equality Duty under Section 149 of the Equality Act 2010, particularly where the question is whether the local authority should provide additional support. Public sector providers of childcare may also have to comply with the Public Sector Equality Duty.

TEMPLATE LETTERS TO USE IF YOU ARE REFUSED CHILDCARE

These can be used and adapted as your family, or a local group you belong to, need, to reflect the position locally. The letters can be sent by email, fax or post. We suggest that where possible the letter is sent by email with a copy sent by post. You can download a word version of each template on our website.

TEMPLATE LETTER 1 (OPPOSITE)

The first letter is designed to be sent to a childcare provider if they have failed to make reasonable adjustments under the Equality Act 2010. Send it to a senior manager working for the childcare provider. If the provider is part of a larger organisation (for example a chain of nurseries) copy the letter to head office.

TEMPLATE LETTER 2 (page 12)

The second letter is designed to be sent in a very specific situation – if:

- you have asked for a reasonable adjustment or adjustments from a childcare provider
- the provider has responded and has given you reasons why the adjustment or adjustments are not reasonable
- the reasons relate to the cost of the adjustments, and you think the reasons seem valid.

Then, you can send this letter to the local authority to ask for ‘top up’ funding to support the necessary adjustments. We suggest you check with the provider that they are happy to receive this funding first.

Send the letter to the Director of Children’s Services, copied to any local authority staff you have discussed the issue with. You may also want to copy the letter to the Lead Member for Children’s Services (see letter 3 below).

It is likely you will need to have a child ‘in need’ assessment for your child and a parent carer needs assessment of your own needs to access this funding. As these assessments can lead to support in a wide range of areas we suggest this is to be welcomed – although we appreciate some families will not want these assessments. In this case you can ask for additional funding, but it will be hard to challenge if it is refused.

TEMPLATE LETTER 3 (page 14)

The third letter is designed to help challenge a local authority which is failing to ensure there is enough childcare available in its local area. Although it is focussed on the free offer for children aged two to four, it can easily be adapted to highlight the lack of childcare for older children. We suggest you send the letter to the Director of Children’s Services, copied to any social worker or manager in the local authority you’re in contact with.

The letter is mainly intended to be a campaigning tool for local groups, but individual parents can send it. If an individual parent is using it, we suggest you consider copying it to the Lead Member for Children’s Services, the councillor who is responsible for children’s services in the local authority.

In both cases, if there is no satisfactory response to the letter within a short timeframe (for example 14 days) then you or your local group may want to seek advice from one of the solicitors in the final section of this resource.

TEMPLATE LETTER 1 – You can download a word version at www.contact.org.uk/t1
Challenging a failure to make reasonable adjustments by a childcare provider

[YOUR ADDRESS]

[DATE]

[NAME OF PROVIDER

ADDRESS]

Dear Mr / Mrs [Name],

I am writing in relation to my child [NAME]. I would like to access childcare for [NAME] from your service. However, the failure by your service to make reasonable adjustments to meet [NAME]'s needs is making this impossible. I am writing this letter to ask you to address this as a matter of urgency so [NAME] can benefit from your service as other non-disabled children can.

[Write a short summary of your child's needs and the barriers your child faces to access childcare at the service. Highlight any attempts you have made to persuade managers and staff to make adjustments].

As you will no doubt be aware, your service is covered by the duty to make reasonable adjustments under sections 20-22 of the Equality Act 2010. This is because you are a provider of services to the public; see section 29(7).

In my view it would be reasonable for you to make the following adjustments to enable [NAME] to access your service: [say what you want them to change]

You will be aware that under section 20(7) of the Equality Act 2010 we cannot be charged for these adjustments.

Please confirm within 14 days that these adjustments will be made and [NAME] will be able to access your service. If you are not willing to make these adjustments, please state this with any reasons you want to give within 14 days.

I have written this letter using a guide that has been published by Contact, the charity for disabled children. The guide is based on general legal advice. I very much hope these reasonable adjustments will now be made, however if they are not I may take legal advice specific to my circumstances.

Yours sincerely,

[Names of those sending letter]

[cc Provider's head office if appropriate]

TEMPLATE LETTER 2 – Download a word version of this letter at www.contat.org.uk/t2

Requesting ‘top up’ funding from a local authority when there is no legal duty on the childcare provider to make a reasonable adjustment.

[YOUR ADDRESS]

[DATE]

[NAME OF DIRECTOR

COUNCIL ADDRESS]

Dear Mr / Mrs [Name],

I am writing in relation to my child [NAME]. I am trying to access childcare for [NAME] from [NAME OF CHILDCARE PROVIDER]. However, as a result of [NAME’s] needs the provider is unable to offer him/her childcare at present. I am writing this letter to ask the local authority to provide additional funding so that [NAME] can access childcare, as other non-disabled children can.

[Write a short summary of your child’s needs and the barriers your child faces to access the service].

In order to address these barriers I have asked the provider to consider whether there are adjustments that they could make that would allow them to meet [NAME’s] needs. [Write a summary here of the response – for example that the provider did not have the funding to employ additional staff]. I have considered this response and it seems to me that it is right to say that it would not be reasonable to expect this provider to take these steps.

I am aware that the local authority has powers and duties to top up the funding available to childcare providers. I understand these are:

Section 8 of the Childcare Act 2006, which gives local authorities a power to assist any person who provides childcare, including by providing financial assistance. As the adjustment which my child needs to access childcare goes beyond what is reasonable for this provider to fund, I would ask the local authority to meet this additional cost.

Section 2(6) of the Chronically Sick and Disabled Persons Act (CSDPA) 1970, which requires the local authority to make arrangements for ‘recreational facilities outside the home or assistance to the child in taking advantage of available educational facilities’ where it is satisfied that it is necessary to do so to meet the child’s needs.

If the local authority is not immediately satisfied that this funding is necessary for the purposes of section 2(6) of the CSDPA 1970, please carry out an urgent child ‘in need’ assessment under section 17 of the Children Act 1989 and the Working Together statutory guidance and confirm that a decision on this question will be taken in the light of this assessment. Please also at the same time undertake a parent carer’s needs assessment of my needs as [NAME’s] carer under section 17ZD of the Children Act 1989.

TEMPLATE LETTER 2 (cont)

Please respond to this letter as soon as possible to either confirm that the additional funding sought will be provided, or to confirm the date by when I will receive my child's assessment and my parent carer's needs assessment and a decision on this funding.

I have written this letter using a guide that has been published by Contact, the charity for disabled children. The guide is based on general legal advice. I very much hope these reasonable adjustments will now be made, however if they are not I may take legal advice specific to my circumstances.

Yours sincerely,

[Names of those sending letter]

[cc any managers or social workers you have been in contact with, and potentially the Lead Member for Children's Services]

TEMPLATE LETTER 3 – Download a word version of this letter at www.contact.org.uk/t3

Challenging a local authority's failure to make sure there is enough childcare provision in its area.

[ADDRESS OF LOCAL GROUP / FAMILY]

[DATE]

[NAME OF DIRECTOR

COUNCIL ADDRESS]

Dear Mr / Mrs [Name],

I am writing on behalf of [my family/name of local group] to express concern about the failure by our local authority to secure sufficient childcare services for families with disabled children.

Childcare is essential in the modern world for all families, including families with disabled children. Yet the recent Parliamentary Inquiry into childcare for disabled children found that the vast majority of parents said that accessing childcare for disabled children is more difficult than for non-disabled children. In particular, 41% of parent carers who responded to the Inquiry's survey said their children did not access the full 15 hours of the free entitlement for early education and childcare for three and four year olds.

In our area there are particular problems with accessing childcare for disabled children. [Write a summary of these problems – for example that many parents of pre-school children cannot identify any appropriate childcare and so children are unable to benefit from the free offer].

We are aware that under Section 6 of the Childcare Act 2006, the local authority has a duty to ensure that there is sufficient childcare for parents who work or want to work, and that for disabled children this duty extends up to 18. Further, under section 8 of this Act the local authority has a power to provide financial assistance to childcare providers which could be used to meet the additional costs associated with childcare for disabled children.

Please can you respond to this letter confirming how the local authority is meeting the duties to provide childcare to disabled children under the Childcare Act 2006, and also addressing the following questions relating to other relevant duties:

1. How the local authority has considered the extent to which childcare provision is sufficient to meet the needs of children and young people in our area (Children and Families Act 2014 section 27). Please provide us in particular with:
 - a. The data you have on the number of disabled children in our area
 - b. The assessment of the level of childcare provision for disabled children in our area
 - c. The analysis which shows that the level of provision is sufficient to meet the needs of families with disabled children in our area.

TEMPLATE LETTER 3 (cont)

2. How the authority has met its duty to provide day care for children ‘in need’ who are aged five or under and not yet attending schools (Children Act 1989 section 18). As you will be aware all disabled children are children ‘in need’.
3. How the authority has complied with the ‘Public Sector Equality Duty’ under section 149 of the Equality Act 2010, in particular how ‘due regard’ has been paid to the need to advance equality of opportunity for disabled children in relation to access to childcare.

Please also confirm where the ‘local offer’ published under the Children and Families Act 2014 sets out ‘sources of information, advice and support...about childcare for children with special educational needs or a disability’. [Delete this if the group is able quickly to find childcare information on the local offer website].

Finally, please provide us with the most recent report to elected Members on how the authority is meeting its duty to secure sufficient childcare, as required by the statutory guidance issued by the Department of Education in September 2014 at para B.3. Please also highlight where in this report childcare for disabled children is addressed, as the guidance requires.

We consider that the provision of childcare for disabled children in our area falls far below that which is reasonably required to help parents to work. As such it seems to us that the local authority may be in breach of the duties set out above, and also the rights protected by Articles 8 and 14 of, and Article 2 of the First Protocol to, the European Convention on Human Rights and Articles 3 and 18 of the UN Convention on the Rights of the Child.

We have written this letter using a guide that has been published by Contact, the charity for families with disabled children. The guide is based on general legal advice. We look forward to your response and would welcome the opportunity to meet with you to discuss the concerns we have set out above and understand the authority’s plans to improve childcare provision in our area. [If however there is no positive response to our letter we may take legal advice as to whether the situation is open to challenge by way of judicial review – delete this sentence if you do not intend to take matters further].

Yours sincerely,

[Name of person sending letter]

[cc any managers or social workers you have been in contact with, and potentially the Lead Member for Children’s Services]

FURTHER SUPPORT AND LEGAL ADVICE

We hope this resource will help families and local groups convince local authorities and providers to improve access to childcare for disabled children. However, if local campaigning does not achieve this, families and local groups may want to consider seeking further support, including advice on a potential legal challenge.

How to challenge a failure to make reasonable adjustments by the childcare provider if you can't resolve it with them directly (for example, by using template letter 1)

You would need to bring a claim in the county court. Legal aid may be available to help with this claim. However, legal aid for discrimination claims in the county court is limited to Legal Help and does not include funding for advocacy. It is your finances as the parent that are taken into account to decide if you are eligible for Legal Help.

You could make an application for 'exceptional funding' to cover advocacy. The solicitors overleaf should be able to give you advice on whether legal aid is available for a discrimination claim.

How to challenge a decision about funding for childcare services by local authorities, if you can't resolve it with them directly

Any challenge will need to be brought by 'judicial review'. Judicial review is the way the High Court supervises the conduct of public bodies and makes sure they act in accordance with the law. The Administrative Court (the part of the High Court which hears judicial review cases) aims to identify where public bodies (like local authorities) have got the law wrong, and make sure it is put right.

Can I do this by myself?

Judicial review relies on 'public law' – the law which governs the conduct of public bodies like local authorities. Public law is complicated. Because of this it is almost impossible to bring a judicial review case without a specialist lawyer to help you. It is even more important you bring a judicial review case with specialist legal advice, because if you lose you are likely to have to pay the local authority's legal costs – which may run in to thousands of pounds.

Can I get legal aid?

Importantly, you can get legal aid for judicial review cases. The huge advantage of legal aid is that it pays for families with disabled children's lawyers. It also provides 'cost protection', so the local authority cannot (generally) pursue costs against you if the claim fails.

Also importantly, it's likely that your disabled child can make the claim, with you (their parent) acting as a 'litigation friend', giving instructions to lawyers on behalf of your child. In this case it is your child's means (the money your child has) that are assessed for legal aid, not yours. So even if you would not be eligible (because you have income or savings above the very low threshold) your child is likely to be eligible. There may still be issues about accessing funding for the first stage of legal advice (known as 'Legal Help') but a legal aid solicitor will be able give you advice about this.

When to make a claim for judicial review

Judicial review challenges need to be brought promptly, particularly when large sums of public money are at stake. So it is vital that families and local groups seek specialist legal advice as early as possible if they are thinking about a legal challenge.

How can local groups help?

While local groups are not eligible for legal aid, they can play a key role by putting families in touch with lawyers, and supporting their claim by providing evidence – witness statements. There are ways that local groups can bring claims, but it is strongly preferable for one or more affected families who can access legal aid to bring the claim. A specialist solicitor will be able to advise on these options.

What happens if the claim for judicial review is successful?

The most likely outcome is that the court will overthrow the decision the local authority has made (that you are challenging), or a declaration will be made. In both these situations, if the court finds that a local authority is in breach of its duty to secure sufficient childcare for disabled children, the local authority will be expected to take urgent steps to address this.


Solicitors who can help

This list of solicitors (1) have relevant legal aid contracts and (2) are known to specialise in public law cases involving disabled children and families. The presence of a particular firm of solicitors on this list is not a recommendation of their work – and the absence of any firm is not a criticism of their work. Families and local groups may want to ask around for recommendations of solicitors who have helped others in similar situations or approach the Law Society.

List of solicitors who may be able to advise families and local groups on potential childcare challenges


Ben Hoare Bell (North East)

www.benhoarebell.co.uk

 @BenHoareBell


Bhatia Best (East Midlands)

www.bhatiabest.co.uk

 @BhatiaBest

Bindmans

www.bindmans.com

 @BindmansLLP


Coram Children's Legal Centre

www.childrenslegalcentre.com

 @CCLCUK


Deighton Pierce Glynn

www.deightonpierceglynnc.co.uk

 @dpg_law


Irwin Mitchell

www.irwinmitchell.com

 @IMPUBLICLAW


Leigh Day

www.leighday.co.uk

 @LeighDay_Law


Maxwell Gillott

www.maxwellgillott.com

 @MaxwellGillott

SCOMO

www.scomo.com

 @ScottMoncrieff

LEGAL SOURCES REFERENCED IN THIS GUIDE

INFORMATION

- Section 12 of the Childcare Act 2006 places a duty on local authorities to provide information, advice and assistance to parents generally about childcare in the area.
- Section 30 of the Children and Families Act 2014 requires Local Authorities to publish a Local Offer setting out the provision it expects to be available for children with SEN or disabilities.
- The SEN and Disability Code of Practice (2014) sets out the specific childcare information which should be published in the Local Offer including ‘sources of information, advice and support...about childcare for children with special educational needs or a disability’.

FREE EARLY EDUCATION OFFER

- Section 7 of the Childcare Act 2006 establishes the entitlement to free early education.
- The Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2014 contains the detail of the free early education entitlement. The way this entitlement is delivered is explained in the Early education and Childcare: Statutory guidance for local authorities September 2014 (Department for Education).

CHILDCARE

- Section 6 of the Childcare Act 2006 creates a duty on Local Authorities to secure sufficient childcare in their area for parents who wish to work or study in relation to work.
- Section 1 of the Childcare Act 2006 requires Local Authorities to improve well-being and reduce inequalities between young children in their area.
- Section 3 of the Childcare Act 2006 requires Local Authorities to promote childcare to parents who may otherwise not access it – which will clearly include parents of disabled children.
- Section 8 of the Childcare Act 2006 gives Local Authorities a power to assist any person who provides childcare, including by providing financial assistance. So an adjustment needed by a particular childcare provider to allow a disabled child to access its services that goes beyond what is reasonable, can be met by a Local Authority using this power.
- The Chronically Sick and Disabled Persons Act (CSDPA) 1970 places a duty on Local Authorities to meet additional costs associated with access to childcare for disabled children under section 2(6) if a need is established following a social care assessment.
- Section 27 of the Children and Families Act 2014 places a duty on Local Authorities to consider the extent to which care provision is sufficient to meet the needs of children and young people in its area.
- Section 18 of the Children Act 1989 requires the provision of day care for children ‘in need’ who are aged five or under and not yet attending schools.

HUMAN RIGHTS:

Article 14 of the European Convention on Human Rights, the right to enjoy all human rights without discrimination, means disabled children's rights may be breached by putting them in a less favourable position than non-disabled children in relation to access to childcare

Article 8 of the European Convention on Human Rights, the right to respect for family and private life, and Article 2 of the First Protocol, the right to education, may also be relevant to access to childcare for disabled children

Article 3 (Best interests of the child) of the United Nations Convention on the Rights of the Child, means disabled children have the right to have their best interests treated as a primary consideration in all decisions affecting them.

Article 18, (Parental responsibilities; state assistance) also means disabled children have a right to access childcare.

EQUALITY

- 'Public Sector Equality Duty' under section 149 of the Equality Act 2010 requires Local Authorities to have 'due regard' to a series of specified needs relating to disabled children, including the need to advance equality of opportunity. Detailed guidance is available on the reasonable adjustments duty in the Equality Act 2010 Code of Practice: Services, public functions and associations.

This document was prepared with input from Alex Rook, Partner at Irwin Mitchell Solicitors (whose contact details at Irwin Mitchell are overleaf) and Steve Broach, Barrister at Monckton Chambers, on behalf of Contact.

Designed by johnclarksondesign.co.uk on behalf of Contact



CONTACT

Contact supports families with disabled children across the UK. Whatever the condition, whenever they need us, wherever they are.

We provide information, advice and support, bringing families together so they can support each other. For advice on any aspect of caring for a disabled child call our freephone helpline.

0808 808 3555

www.contact.org.uk



IRWIN MITCHELL

Legal experts in challenging health and social care packages, special educational needs, Court of Protection issues, wills and trust, as well as serious injury and medical negligence claims.

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