

**contact** a family  
for families with disabled children

Strengthening Carer Parent Participation

**Please Note; The recorded webinar provides general information in relation to the law affecting disabled children to help parent forums in their work. It cannot and should not be relied on as legal advice in relation to any individual case and no warranty is given that the information is correct or up to date. Forums or families with specific legal concerns should contact specialist lawyers or advice organisations, including the Contact a Family Helpline**

**(free phone 0808 808 3555 9.30am to 5pm Mon – Fri)**

# Using the law to challenge cuts to short break services

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# Agenda for the Webinar

- Short breaks – Aiming High for Disabled Children onwards
- Short breaks duty and the Breaks for Carers of Disabled Children Regulations 2011
- Other relevant legal duties
- (Short break...!)
- Law on challenging cuts to services (inc consultation and public sector equality duty)
- Potential avenues of challenge

# Short breaks - background

- Short breaks
  - Day, evening, overnight and weekend activities for the child or young person
  - Can take place in the child's own home, the home of an approved carer, or in a residential or community setting
- Vital importance – Parliamentary Hearings, Mencap *Breaking Point* reports
- Huge barriers to access identified in Parliamentary Hearings

# Short breaks – AHDC onwards

- Aiming High for Disabled Children – huge investment in services, particularly short breaks (LAs and NHS)
- Development of self-referral models – ‘local offer’ – no formal assessment required
- Programme ended in 2011 BUT funding sustained – at least until 2014/15
- Children’s services targeted for cuts in 2015/15 – BUT Hampshire cuts reversed

# The Short Breaks Duty

- Intended to sustain the progress through AHDC
- Children and Young Persons Act 2008 inserted new para 6(1)(c) in Schedule 2 to the Children Act 1989
  - Requires LAs to assist parent carers ‘to continue to [provide care], or to do so more effectively, by giving them breaks from caring’
- Duty expanded upon by the Breaks for Carers of Disabled Children Regulations 2011

# Breaks for Carers of Disabled Children

## Regs 2011

- Reg 3 – LAs required to focus on carers' needs:
  - *'to undertake education, training or any regular leisure activity, meet the needs of other children in the family more effectively, or carry out day to day tasks which they must perform in order to run their household*
- Reg 4 – duty to provide *'so far as is reasonably practicable, a range of services which is sufficient to assist carers...'*



# Breaks for Carers of Disabled Children Regs 2011 (2)

- Reg 4 (cont) – services must include:
  - *day-time care*
  - *overnight care*
  - *educational or leisure activities for disabled children outside their homes, and*
  - *services available to assist carers in the evenings, at weekends and during the school holidays.*
- Reg 5 – duty to publish short breaks services statement

# Breaks for Carers of Disabled Children

## Regs 2011 (3)

- Reg 5 (cont) – short breaks services statement must cover
  - the range of services provided in accordance with regulation 4
  - any criteria by which eligibility for those services will be assessed, and
  - how the range of services is designed to meet the needs of carers in their area.

# Other duties (1) – CSDPA 1970 s 2

- Key duty to provide social care to disabled children (and adults until 1 April 2015)
- Services must be provided where it is ‘necessary’ to meet a child’s needs
  - LAs can take account of their resources when deciding whether ‘necessary’ to meet need – but not when deciding level of service to provide
- Decision on whether ‘necessary’ should be through assessment – see *Working Together*

# Other duties (2) – CFA 2014 s 27

- New duty from 1 Sept 2014
- Requires LAs to consider extent to which social care provision is sufficient to meet needs in its area.
- This in turn requires LAs to know:
  - How many disabled children are in the area – *is there a register?*
  - What level of service is available
  - Is the level of service meeting need

# Other duties (3) – Human Rights

- Relevant human rights provisions:
  - Article 8 ECHR – right to respect for family and private life (Art 14 re non-discrimination)
  - Article 19 UN CRPD – requirement for range of community support for disabled people
  - Article 23 UN CRC – requirement for ‘special care’ for disabled children
  - Article 3 UN CRC – duty to treat children’s best interests as ‘*a primary consideration*’ in all decision that affect them

# Other duties (4) – Equality Act

- Key non-discrimination duties
  - Duty to make ‘reasonable adjustments’ to policies, procedures and practices
  - Duty to avoid ‘discrimination arising from disability’
  - Public sector equality duty (PSED - section 149)
    - Duty to have ‘*due regard*’ to series of specified needs
    - Key need here – need to ‘*advance equality of opportunity*’
    - Duty to consider, not to achieve result (still powerful)

**Contact a Family webinar  
'Using the law to challenge cuts  
to short break services'  
with Steve Broach**

**Five Minute Break 14:00 to 14:05**

# Law on challenging cuts (1)

## Consultation

- Whether or not required, if started has to be done properly (*Coughlan*)
- Question – is the process fair?
  - Enough time?
  - Sufficient information to give proper response?
  - Fair access to all relevant consultees?
  - If cuts proposed – was there any mention of ‘*arguable but discarded alternatives*’ eg using reserves, increasing Council Tax? (Supreme Court in *Moseley*)



# Law on challenging cuts (2)

## PSED

- Key case = *Bracking* in Court of Appeal (first challenge to Independent Living Fund closure)
- Two key questions:
  - Do the decision makers understand the impact of the proposal?
  - Has there been specific consideration of the statutory needs (eg the need to advance equality of opportunity)?
- Don't get too hung up on the EIA...

# Law on challenging cuts (3)

## Three legal errors to look out for

1. Is access to a social work assessment restricted only to certain groups of disabled children, eg those with 'complex' needs?
  - a) See *Working Together* at page 17
2. Where service reduction or closure is proposed, can the LA demonstrate that there are alternatives that will meet need?
3. New eligibility criteria being unlawful or applied without re-assessment (breach of Art 8 ECHR)

# Ways to challenge

- First task – make sure you see the cuts coming
- Consider Cabinet and Council agendas (all online)
- Does anyone in the forum have finance expertise?
- Ask Councillors and Officers to explain the proposals
- Write as early as possible to raise concerns

# Ways to challenge (2)

- However – don't hang about...
  - Budgets will all be set in mid-late Feb
  - Consultations (if happened) will have concluded
  - Proposed cuts need to be challenged if possible before they are made
  - Will be difficult to challenge a cut to the budget after it is made – but will still be possible to challenge how the cut is implemented
    - No consultation / breach of PSED
    - Proposal fails to comply with statutory duties

# Ways to challenge (3)

- Route to legal challenge – judicial review
  - Will need to be brought promptly – very promptly if challenging budget
  - Requires a ‘letter before action’ from solicitors with (typically) 14 day response time
  - Legal aid is available
    - NB – may be argued that proper claimant is parent not child, so helpful if parents who bring claim are themselves eligible for legal aid (low income / savings)
  - Likely outcome – decisions quashed, taken again

# Resources

- EDCM short breaks resource

<http://www.edcm.org.uk/campaigns-and-policy/short-breaks/short-breaks-and-the-law/legal-resource-for-parent-carers>

- Blog Posts

- Short breaks

<https://rightsinreality.wordpress.com/2014/09/15/short-breaks-for-family-carers-when-enough-is-enough/>

- Challenging cuts

<https://rightsinreality.wordpress.com/2014/11/11/challenging-the-coming-cuts-to-childrens-services-budgets/>

- Judicial review

<https://rightsinreality.wordpress.com/2014/08/30/why-judicial-review-is-a-real-remedy-in-sen-and-disability-cases/>

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## Thank You

- Thank you for attending with us today
- A short questionnaire will launch at the end of this webinar
- Please take the time to complete this it will help us plan future online training events including other topics you would like to see
- The recording of this Webinar, presentation and questions will be on the parent participation Resources page of Contact a Family's website next week – an email confirming this will be sent to you once this is available