

Challenging a refusal to assess your disabled child for specialist services

This leaflet has been produced by the Every Disabled Child Matters campaign to help families with disabled children understand their rights and get the support they need.

The letter contained within this leaflet is intended to help parents who have been told that their council will not assess their disabled child in relation to short breaks or any other specialist service (but not assessments of a child's education needs¹). It has been written by Steve Broach, a barrister at Doughty Street Chambers and Alex Rook, Associate Solicitor at Irwin Mitchell, two lawyers who specialise in cases involving disabled children. Parents should note that this leaflet is a general guide and does not replace legal advice on their specific case.

The first step for a parent, before sending the letter suggested below, is to ask for an assessment. Parents should ask their social worker (if they have one) or the duty worker for the Disabled Children's Team (or equivalent) if they will carry out the assessment. There is no need for parents to ask for the assessment in any particular way – the request can be made on the telephone, face-to-face or in writing (email or letter). Parents can simply ask – "will the council carry out an assessment of my child under section 17 of the Children Act 1989?". If the answer is 'no', then a version of the letter on the other side of this leaflet can be sent. Councils only have one working day to decide whether they are going to assess, and so if no response is received within a few days, it is appropriate to treat that as a 'no' and the letter below can then be sent.

Assessments under the Children Act 1989 are the first part of the legal process that councils must go through in order to decide if a disabled child and / or their family should be provided with services. The law says that councils **must** assess every child who is or may be a child '**in need**'. Children are 'in need' if they need help from the council with their health or development or if they are '**disabled**'.

Examples collected by the National Network of Parent Carer Forums of unlawful reasons where councils have refused an assessment include:

- A parent of a 3 year old with severe cerebral palsy was told that her child was not eligible for an assessment as he was too young for services. There is no minimum age for a child to be 'in need' and for an assessment to be required.
- A parent was told that an assessment would not be carried out unless her child had a confirmed diagnosis. There is no requirement for a formal diagnosis before there is a duty to assess.

¹ If a parent has been told that a local authority will not assess a child's special educational needs in relation to a potential statement of SEN, then advice can be obtained from the local Parent Partnership Service (<http://www.parentpartnership.org.uk/>), IPSEA (<http://www.ipsea.org.uk>) or other education advice organisations.

The term 'disabled' under the Children Act 1989 has a very wide meaning. It includes any mental disorder or any substantial and permanent physical disability. It will be unlawful to refuse to assess children because they have a particular type of disability – for example ADHD or Asperger syndrome.

Any assessment has to be carried out in accordance with the *Framework for the assessment of children in need* ('the Assessment Framework'), published by the Department of Health in 2000. Importantly, the Assessment Framework requires assessments to be carried out quickly and to cover all the areas of potential need that a child may have.

In some areas, disabled children and young people may be able to access some services without an assessment. However generally an assessment will be the way in which disabled children and their families access specialist services – including direct payments.

An assessment is only the first step in the process of a child getting services. Once an assessment has been carried out the council must then decide whether it is necessary to provide the child with a service. Many councils use 'eligibility criteria' to help them reach this decision (issues with eligibility criteria will be the subject of another guide in this series).

Although parents should always try to resolve disputes with the council through discussions, if there is no response to a letter such as the one below, or if an assessment has taken place and nothing has happened as a result, or if parents strongly disagree with the conclusions of an assessment (which may be that the Local Authority does not need to provide services) then it will be necessary to take specialist advice. This can come from one of the helplines (for example those run by Contact a Family on 0808 808 3555 or the National Autistic Society on 0808 800 4104) or from a specialist lawyer.²

The letter which can be sent when a council has refused to carry out an assessment is set out below. All the text in square brackets needs to be replaced. The letter should be sent, by fax, email and post if possible, to Director of Children's Services and also to the social worker (if parents have one) and to the Lead Member for Children's Services (the councillor who is in charge of children's services for the council). The council website or the telephone information line should have the relevant names and addresses.

In association with



² See the list of solicitors at the end of the paper 'Using the Law to Fight Cuts to Disabled Children's Services' at http://www.ncb.org.uk/edcm/Using_the_Law_to_Fight_Cuts.pdf

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YOUR NAME
YOUR ADDRESS
DATE

Dear [NAME],

I am writing to you because I have been told that my son / daughter will not be assessed for services from the council. I was told this by *[insert name and job title of the person]* in a letter / telephone call / meeting on *[date]*. *[If you have asked for an assessment and there has been no response, set out instead when you asked and in what way – phone call, letter, email etc].*

My child *[name]* is *[age]* and has the following disabilities and special needs *[write a short summary here of your child's needs, including any diagnoses they may have]*.

As you can see my child *[is a 'disabled' child / may be a 'disabled' child]*. I understand that under section 17 of the Children Act 1989 there is a very wide definition of 'disabled' and there is a duty to assess every child who is or may be disabled. As such the council has a duty to assess my child.

I also understand that under the Framework for the Assessment of Children in Need and the Working Together to Safeguard Children guidance, an **Initial Assessment** must be carried out within **10 working days** of the referral, and a **Core Assessment** must be carried out within **35 working days** of the date of the referral or the date the Initial Assessment was completed, if the council decides to do an Initial Assessment first.

Please therefore confirm as soon as possible that the council will comply with its duties and carry out either an Initial Assessment or a Core Assessment in the time required by the guidance.

[If you want a particular service, ask here for this to be considered in the assessment – for example 'The main reason why I want my child to be assessed is because he does not get enough social opportunities and I want him to have the benefit of a regular short break. I also need a break from caring for him so I can recharge my batteries. Please confirm that the assessment will specifically consider our need for a short break']

I have written this letter using a guide which has been published by the Every Disabled Child Matters campaign. The guide was based on legal advice. I hope you will confirm that the council will act on its duty to assess my child, but if you do not I will have to consider taking the matter further.

I look forward to receiving your reply at the earliest possible date. Please respond no later than three working days from the date above so the assessment can be completed in the time required.

Yours sincerely...