

Children Act 1989: Local Authority Support for Children and Families

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INTRODUCTION

Part III of the Children Act 1989 sets out the duties owed by local authorities to children and families in their area. It deals with services that must, or may, be provided by every children's services authority. The provisions in Part III are often referred to as the voluntary provisions. They reflect the principles of minimal state intervention and of supporting children within their family of origin that were intended to be the cornerstones of the Children Act.

Services provided pursuant to s 17 are available to children who are 'in need' in accordance with the definition found in that section to the extent that they and/or their families wish to access such services. Accommodation provided pursuant to s 20 generally requires the consent of those who have parental responsibility for the child. Many of the other functions in Part III arise as a result of a child being a looked after child and one of the routes to a child being looked after is that the child is accommodated pursuant to s 20. These include the duties owed to looked after children pursuant to s 22 and ss 22A to 22F of the Children Act 1989, the so called 'leaving care' provisions – duties owed to children who are no longer looked after, or in preparation for the child ceasing to be a looked after child, and the provision of secure accommodation to looked after children who meet the criteria in s 25(1).

Prior to the implementation of the Children Act 1989, the range of services provided for under Part III of that Act were found in different pieces of legislation. This included provision within the Child Care Act 1980 for children to be supported within their family of origin where appropriate. Section 1 of that statute, for example, required local authorities to provide assistance to promote the welfare of children by diminishing the need for them to be taken into care or brought before the juvenile courts. Section 2 imposed a duty on local authorities to receive a child into voluntary care in certain circumstances.

Different welfare legislation, however, made provision for services to disabled people of all ages, including children. This included the National Health Service Act 1977, the Chronically Sick and Disabled Persons Act 1970, and the National Assistance Act 1948.

The aim of the Children Act was to unify and consolidate the different legislative provisions relating to children. The objective was to ensure that all children should receive the standard of care and services appropriate to their needs. The new statute was to provide an overarching power to local authorities to promote the care and welfare of children within their area. The

white paper which preceded the new legislation (*The Law on Child Care and Family Services*, Cm 62 (1987)) set out that, broadly speaking, all existing powers and duties to provide services to children were to be maintained and amalgamated in the new statute.

Since the implementation of the Children Act 1989, further legislation has added to and enhanced the range of services to be provided by local authority children's services departments under Part III. The Children (Leaving Care) Act 2000 inserts new provisions into the 1989 Act designed to improve the life chances of young adults who have been looked after. The Children Act 2004 establishes children's services departments and imposes new duties on all agencies working with children to cooperate and share information. In 2011, further amendments to Part III were brought into force by the Children and Young Persons Act 2008. This was accompanied by a fresh panoply of guidance and secondary legislation which aims to streamline and clarify the provision of services by local authorities under this Part.

In recent years, the higher courts have been repeatedly called upon to determine the parameters of the duties owed by local authorities under Part III. The aim of this book is to bring together the legislation, statutory guidance, and case law relating to these duties and services and to provide some analysis of what is a fascinating and rapidly growing area of the law relating to children and young people.

CONTENTS

Acknowledgments	v
Introduction	vii
Table of Cases	xv
Table of Statutes	xxi
Table of Statutory Instruments	xxvii
Table of Codes of Guidance	xxxii
Chapter 1	
Section 17: Children in Need	1
Introduction	1
‘Child in need’ – definition	2
The role of the local authority	4
‘Gateway status’	4
Section 17(1) duty	5
R (G) v Barnet and Others	5
Section 17(2) duties and services	8
Schedule 2	8
Discretionary services	10
Disabled children	10
Services to families	11
Child protection	11
Meaning of ‘within their area’	12
Assessment	12
Provision of services	13
Charging for services	13
Chapter 2	
Assessment of Children in Need	15
Introduction	15
Guidance for the assessment of children in need	16
Framework for the assessment of children in need	18
Timing	20
Core assessment	21
Procedural matters	22
Eligibility criteria	23
Children Act 2004	23
The Common Assessment Framework	24
Challenging an assessment	24

Appendix	27
Individual Cases Flowchart	27
Chapter 3	
Age Assessments	29
Guidance for the conduct of age assessments	30
The 'Merton' guidance	30
The 'Croydon / Hillingdon' Guidance	32
A new approach: fact-finding hearings	33
Guidance on the conduct of fact-finding hearings	35
Scope of judicial review	35
Permission	35
Burden and standard of proof	36
Witnesses	36
Medical evidence	37
Article 6	39
Chapter 4	
Section 20: Duties and Powers	41
Outline	42
The 'section 20(1) duty'	43
Southwark London Borough Council v D	43
'Private fostering'	44
'Section 20(1) duty'	45
The case-law post-Southwark	47
Section 20 v section 17 accommodation	47
Guidance	48
The 'Wandsworth' case	49
Hackney	50
Islington	50
Conclusion	51
Section 20 v Housing Act duties	52
R (S) v Sutton London Borough Council	52
R (M) v Hammersmith and Fulham London Borough Council	53
Conclusion	54
'Sidestepping'	54
Section 20 v Education Act	55
Discussion	56
Chapter 5	
Section 20: Interpretation	59
Section 20(1)	59
The respective roles of the court and the local authority	60
When is a parent 'prevented' from providing suitable accommodation or care?	61
The meaning of 'require accommodation'	63
'Require accommodation' – discussion	64

R (G) v Southwark: A watershed	66
R (G) v Southwark: Discussion	68
Section 20(6) – child’s wishes and feelings	69
Section 20(7)	71
Exceptions	72
The responsible local authority	72
Removing a child from s 20 accommodation	72
 Chapter 6	
Looked After Children	75
Introduction	75
‘Looked after child’ – definition	76
General duty to looked after children	77
Decision-making	77
Public protection	79
Arrangements and care planning	79
Care plan	79
Provision of accommodation and maintenance	80
Maintenance	81
Accommodation	81
Preferred types of placement	81
Other types of placement	82
The problem in Southwark London Borough Council v D	83
Placements – additional considerations	85
Placement of disabled children	85
Placement with parents etc	85
Suitability to care	86
The placement decision	87
Placement with local authority foster parents	87
Placement planning	88
Termination of placement	90
Contact	91
Independent Reviewing Officers	91
The role of the IRO	92
Reviews	93
Timing of reviews	94
Representations and complaints	94
Visits to looked after children	95
Timing of visits	95
Independent visitor	96
Support for accommodated children	97
Education and training	97
 Chapter 7	
Secure Accommodation: Principles	99
Introduction	99
Child’s welfare – a relevant consideration	101
Section 25: permission or prohibition?	103

xii *Children Act 1989: Local Authority Support for Children and Families*

Who is the decision-maker?	105
Convention rights	106
Article 5	107
Article 6	107

Chapter 8**Secure Accommodation: Practice 109**

The section 25 criteria	109
Child must be 'looked after'	110
Secure accommodation: definition	110
Time limits	112
A conditional order	113
Interim orders	113
Children accommodated by health and education authorities etc	114
Limitations and exceptions	115
Regulation 5	115
Secure accommodation and wardship	116
Younger children	117
Procedure	117
Child must be represented	117
Conduct of hearing	118
Attendance of child at hearing	119
Written evidence	119
The children's guardian	119
Remedies	120
Duty to inform	121
Duty to keep records	121
Review	122
Detained children and children remanded to local authority accommodation	123
Regulation 6 – alternative criteria for secure accommodation	123
Procedure	125
Time limits	127
CYPA 1969, s 23(4) – requirement for secure accommodation	127
Children bailed to local authority accommodation	128
Removal from secure accommodation	128
Appendix	129
Application for secure accommodation order: Procedure	129

Chapter 9**Leaving Care 131**

Introduction and overview	131
Removal of benefits	133
Who benefits from the leaving care provisions?	134
Eligible children	134
Relevant children	136
Former relevant children	137
The responsible local authority	137

Local authority duties to eligible and relevant children	138
Duties to eligible children	138
Duties to relevant children	139
Assessment	140
Pathway plan	143
Personal adviser	146
Duties owed to former relevant children	147
The 'Caerphilly' case	150
Advice and assistance	153
Qualifying persons	153
Section 24A – advice and assistance	155
Employment, education and training – s 24B	155
Information – s 24C	157
Representations – s 24D	157
Appendices	159
Flowchart: Identifying eligible and relevant children	159
Flowchart: Identifying former relevant children	160
Definitions of categories of children entitled to care leaving support	161
Age, time, status table	165
Chapter 10	
Children in the Criminal Justice System	167
Introduction	167
Section 21 of the Children Act 1989	167
Section 21(2) duty	168
The responsible local authority	169
Children in custody	169
Local authority duties to children in custody	170
Children in custody: limitations on the s 17 duty	171
Assessment	172
Visits to former looked after children	172
Working together: Safeguarding welfare	173
Statutory guidance	174
Youth offending team	175
Appendix 1	
Children Act 1989	177
Appendix 2	
Children (Secure Accommodation) Regulations 1991	213
Children (Secure Accommodation) (No 2) Regulations 1991	219
Care Planning, Placement and Case Review (England)	
Regulations 2010	220
Care Leavers (England) Regulations 2010	254
Index	263

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Chapter 1

SECTION 17: CHILDREN IN NEED

INTRODUCTION

1.1 Part III of the Children Act 1989 (CA 1989), begins with s 17, headed 'Provision of services for children in need, their families and others'. It sets out the definition of children in need as well as the general duties owed to such children:

(1) It shall be the general duty of every local authority (in addition to the other duties imposed on them by this Part)–

- (a) to safeguard and promote the welfare of children within their area who are in need; and
- (b) so far as is consistent with that duty, to promote the upbringing of such children by their families,

by providing a range and level of services appropriate to those children's needs.

(2) For the purpose principally of facilitating the discharge of their general duty under this section, every local authority shall have the specific duties and powers set out in Part I of Schedule 2.

(3) Any service provided by an authority in the exercise of functions conferred on them by this section may be provided for the family of a particular child in need or for any member of his family, if it is provided with a view to safeguarding or promoting the child's welfare.

(4) The appropriate national authority may by order amend any provision of Part I of Schedule 2 or add any further duty or power to those or the time being mentioned there.

(4A) Before determining what (if any) services to provide for a particular child in need in the exercise of functions conferred on them by this section, a local authority shall, so far as is reasonably practicable and consistent with the child's welfare–

- (a) ascertain the child's wishes and feelings regarding the provision of those services; and
- (b) give due consideration (having regard to his age and understanding) to such wishes and feelings of the child as they have been able to ascertain.

(5) Every local authority–

- (a) shall facilitate the provision by others (including in particular voluntary organisations) of services which it is a function of the authority to provide by virtue of this section, or section 18, 20, 22A to 22C, 23B, 24A or 24B; and

2 *Children Act 1989: Local Authority Support for Children and Families*

- (b) may make such arrangements as they see fit for any person to act on their behalf in the provision of any such service.
- (6) The services provided by a local authority in the exercise of functions conferred on them by this section may include providing accommodation and giving assistance in kind or in cash.
- (7) Assistance may be unconditional or subject to conditions as to the repayment of the assistance or of its value (in whole or in part).
- (8) Before giving any assistance or imposing any conditions, a local authority shall have regard to the means of the child concerned and of each of his parents.
- (9) No person shall be liable to make any repayment of assistance or of its value at any time when he is in receipt of income support under Part VII of the Social Security Contributions and Benefits Act 1992, of any element of child tax credit other than the family element, of working tax credit, of an income-based jobseeker's allowance or of an income-related employment and support allowance.
- (10) For the purposes of this Part a child shall be in need if—
 - (a) he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by a local authority under this Part;
 - (b) his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services; or
 - (c) he is disabled,

and “family” in relation to such a child, includes any person who has parental responsibility for the child and any other person with whom he has been living.

- (11) For the purposes of this Part, a child is disabled if he is blind, deaf or dumb or suffers from mental disorder of any kind or is substantially and permanently handicapped by illness, injury or congenital deformity or such other disability as may be prescribed; and in this Part—

“development” means physical, intellectual, emotional, social or behavioural development; and

“health” means physical or mental health.

- (12) The treasury may by regulations prescribe circumstances in which a person is to be treated for the purposes of this Part (or for such of those purposes as are prescribed) as in receipt of any element of child tax credit other than the family element or of working tax credit.¹

‘CHILD IN NEED’ – DEFINITION

1.2 The definition of children in need is provided in s 17(10). It includes children who, unless services are provided, are unlikely to achieve or maintain a reasonable standard of health or development,¹ whose health or development is likely to be significantly impaired or further impaired without the provision of

¹ Section 17(10)(a).

services,² and children who are disabled.³ ‘Development’ for these purposes means physical, intellectual, emotional, social or behavioural development. ‘Health’ is defined as meaning physical or mental health.⁴

1.3 The meaning of ‘disabled child’ is elaborated upon in s 17(11) to include a child who is blind, deaf or dumb or suffers from mental disorder of any kind or is substantially and permanently handicapped by illness, injury or congenital deformity. This mirrors the definition of individuals entitled to assistance under s 29 of the National Assistance Act 1948. Consequently, the criteria by which a disabled person becomes eligible for services are the same for both children and adults.

1.4 The meaning of ‘mental disorder’ is further defined in s 1(2) of the Mental Health Act 1983:

‘In this Act,

“mental disorder” means mental illness, arrested or incomplete development of mind, psychopathic disorder and any other disorder or disability of mind and “mentally disordered” shall be construed accordingly.

The definition of a child in need is deliberately broad in order to reinforce the emphasis on preventive support and services to families.⁵

1.5 A ‘child’ for the purposes of s 17 support means a person under the age of eighteen.⁶ A local authority cannot decline to conduct an assessment of need simply because a child is soon to reach the age of eighteen.⁷

1.6 The guidance issued as the Children Act came into force gave the following explanation of what is meant by ‘in need’:⁸

‘The child’s needs will include physical, emotional and educational needs according to his age, sex, race, religion, culture and language and the capacity of the current carer to meet those needs. This guidance does not lay down firm criteria or set general priorities because the Act requires each authority to decide its own level and scale of services appropriate to the children in need in its area.

² Section 17(10)(b).

³ Section 17(10)(c).

⁴ Section 17(11).

⁵ This is explained in the guidance that accompanied the Children Act 1989: *The Children Act 1989 Guidance and Regulations, Volume 2: Family Support, Day Care and Educational Provision for Young Children*, para 2.4.

⁶ CA 1989, s 105(1).

⁷ *R (MM) v Lewisham London Borough Council* [2009] EWHC 416 (Admin), [2009] All ER (D) 71 (Mar). In this case, the young person concerned was aged 17 and had been provided with housing and was also in receipt of benefits. These factors did not preclude her from being regarded as a child in need.

⁸ *The Children Act 1989 Guidance and Regulations, Volume 2: Family Support, Day Care and Educational Provision for Young Children*, para 2.4.

However, because the definition [of a 'child in need'] is in the Act, a local authority cannot lawfully substitute any other definition for the purposes of Part III'.

The role of the local authority

1.7 It is the duty of a local authority to take reasonable steps to identify the extent to which there are children in need within their area.⁹ The Act also makes provision for the local authority to conduct an assessment of those needs.¹⁰ If a local authority receives a referral relating to a child who is potentially 'in need', it must give more than summary consideration to this referral. A local authority is potentially in breach of its duties under Part III of the Act if it concludes that no duties are owed simply because the referral is 'vague' or unclear.¹¹

1.8 The CA 1989 does not say who determines whether a child is in need, that is, whether the criteria set out by the statute are satisfied. However, it is clear from the decision of the Supreme Court in *R (A) v Croydon London Borough Council*; *R (M) v Lambeth London Borough Council* that this is an evaluative question that falls within the judgment of the local authority.¹²

'Gateway status'

1.9 The criteria that determine whether or not a child is 'in need' are significant not only for the purpose of services provided under s 17 but also because it is a gateway status to many of the other provisions under Part III of the Act. In order to be provided with accommodation pursuant to s 20 of the CA 1989, a child must be 'in need'. This then gives rise to what one judge has described as a 'statutory chain'.¹³ A child accommodated pursuant to s 20 becomes a child who is looked after by the local authority. A full range of provisions in turn apply only to children who are, or have been, looked after.¹⁴

⁹ CA 1989, Sch 2, para 1(1).

¹⁰ CA 1989, Sch 2, para 3.

¹¹ *R (MM) v Lewisham London Borough Council* [2009] EWHC 416 (Admin), [2009] All ER (D) 71 (Mar). If a local authority believes that a referral is 'vague', it is duty-bound to ask questions and make further enquiries.

¹² [2009] UKSC 8, [2009] WLR (D) 342. The distinction between questions that fall within the evaluative judgment of the local authority and questions of fact that may ultimately be determined by the courts is discussed in greater detail in Chapter 5.

¹³ Holman J in *R (H) v Wandsworth London Borough Council* [2007] EWHC 1082 (Admin), [2007] 2 FLR 822 at [59].

¹⁴ See in particular CA 1989, ss 22 and 22A–22F; a young person who satisfies the qualifying requirements will also qualify for the so-called 'leaving care provisions': CA 1989, ss 23A–23E, 24–24D; they will be entitled to have their case reviewed at regular intervals and to regular visits from the local authority: see Chapter 6. A looked after child may also be made subject to an order for secure accommodation: s 25(1).

SECTION 17(1) DUTY

1.10 Section 17(1) imposes a duty on local authorities to maintain a range and level of services in their area such that they are able to discharge their duties to children in need. This is a general duty.¹⁵ Section 17(2) sets out the particular duties which local authorities must carry out in order to discharge the general duty. A local authority may discharge its duty to provide services for children in need by arranging for another person or organisation to act on its behalf.¹⁶

R (G) v Barnet and Others¹⁷

1.11 This case reached the House of Lords in 2003. It involved three conjoined appeals, each one concerned with whether s 17 imposed a mandatory duty on a local authority to provide housing to the parent of a child in need so as to enable the child to continue to live with parents who lacked suitable accommodation. In two of the appeals the parents faced homelessness and were not entitled to relief under the housing legislation. Consequently, the CA 1989 appeared to present the only means by which the families could be rehoused and remain living together in the same household. The children were regarded as children in need because their health or development was likely to be significantly impaired without the provision of services by the local authority.¹⁸ The third case concerned a family in which two of the children were disabled and the accommodation that the family was living in was wholly unsuitable for the children in light of their particular difficulties.

1.12 Section 17(6) had been amended by s 116(1) of the Adoption and Children Act 2002 so as to incorporate a power to provide accommodation under this subsection.¹⁹ This also means that accommodation may be provided not only to a child in need but also to his or her family.²⁰ Since this amendment to the Act, the question of whether accommodation is, or should be, provided pursuant to the s 17(6) power or the s 20(1) duty has repeatedly troubled the courts.²¹

1.13 However, it was not sufficient to assist the families in these cases that the local authorities in question had the *power*, by virtue of s 17(6), to provide accommodation to these families. The question that arose was whether s 17 conferred specific *duties* on local authorities, owed to particular individuals, or

¹⁵ *R (G) v Barnet London Borough Council; R (W) v Lambeth London Borough Council; R (A) v Lambeth London Borough Council* [2003] UKHL 57, [2004] 2 AC 208 [2004] 1 FLR 454, HL.

¹⁶ Section 17(5)(b).

¹⁷ See n 15.

¹⁸ See s 17(10)(b).

¹⁹ This followed an earlier decision in the Court of Appeal in one of the cases that later reached the House of Lords that s 17 did not confer on local authorities a power to provide financial assistance for accommodation: see *R (A) v London Borough of Lambeth* [2001] EWCA Civ 1624, [2002] 1 FLR 353.

²⁰ Section 17(3).

²¹ This issue is dealt with in detail in Chapter 4.

whether it conferred simply a general or 'target' duty. Each of the claimants asserted that s 17(1) imposed a duty on the local authority in question to meet the needs (for residential accommodation) if an assessment shows that this is what is required by the children in question. Lord Hope therefore identified the question of law at the heart of this case as:²²

'Does section 17(1) require a local social services authority to meet every need which has been identified by an assessment of the needs of each individual child within their area?'

1.14 The majority of the House of Lords concluded that the wording of s 17(1) does not support the existence of specific duties owed to individual children in need.²³ The duty to provide a range of appropriate services is described in that subsection as a 'general duty'. It is also said to be in addition to the other duties imposed on local authorities by Part III of the Act. The range of duties mentioned elsewhere in Part III of the Act and in Sch 2 tended to support the view that s 17(1) is concerned with general principles as opposed to specific duties. In particular, the other duties were carefully framed so as to give local authorities a discretion as to how to meet the needs of individual children in need. Consequently, many of the duties are not absolute but are duties to 'take reasonable steps'.²⁴

1.15 This conclusion is also supported by the DHSS *Review of Child Care Law* which contained the following recommendations:

'5.8 We believe the provisions should be stated clearly in general terms of making services available at an appropriate level to the needs of the area rather than in terms of duties owed to individual children or families, in order to leave local authorities a wide flexibility to decide what is appropriate for particular cases while providing for a reasonable overall level of provision. It is for local authorities to decide on their priorities within the resources available to them.'

1.16 The recommendations of the DHSS Working Party were taken into account in the Government White Paper, *The Law on Child Care and Family Services*, which preceded the Bill that later became CA 1989.²⁵

1.17 Lord Hope therefore concludes that s 17(1) 'is concerned with general principles and is not designed to confer absolute rights on individuals'.²⁶ He goes on to state:²⁷

²² *R (G) v Barnet London Borough Council; R (W) v Lambeth London Borough Council; R (A) v Lambeth London Borough Council* [2003] UKHL 57, [2004] 1 FLR 454 at [76].

²³ Ibid at [79]–[82], per Lord Hope; [107]–[110], per Lord Millett; [114]–[119], per Lord Scott.

²⁴ It is suggested by Lord Scott, ibid at [118], that this enables local authorities to take into account considerations including financial resources when deciding if, how, and to what extent, to meet these specific needs.

²⁵ This is referred to in the judgment of Lord Hope, ibid at [84].

²⁶ Ibid at [80].

²⁷ Ibid at [85].

‘... the so-called “general duty” in section 17(1) is owed to all the children who are in need within their area and not to each child in need individually. It is an overriding duty, a statement of general principle. It provides the broad aims which the local authority is to bear in mind when it is performing the “other duties” set out in Part III ...’.

1.18 Rejecting the argument of the appellants that, as a result of an assessment, the general duty ‘crystallises’ into a specific duty owed to individual children, Lord Hope continues:²⁸

‘I think that the correct analysis of section 17(1) is that it sets out duties of a general character which are intended to be for the benefit of children in need in the local social services authority’s area in general. The other duties and the specific duties which then follow must be performed in each individual case by reference to the general duties which section 17(1) sets out. What the subsection does is to set out the duties owed to a section of the public in general by which the authority must be guided in the performance of those other duties.’

1.19 Finally, Lord Hope points out that imposing a duty by virtue of s 17(6) to provide housing to all children in need whose families had accommodation difficulties would impose a massive financial burden on local authority children’s services budgets. Such a duty would also sit uneasily with the housing legislation, whose primary function is to provide housing, whereas it is not the primary function of the Children Act.²⁹

1.20 Ultimately, all three appeals failed. Local authorities are not required by the statute to meet every need of every individual child, although in two of the three cases the families’ housing difficulties had been resolved by the time the matter was heard. The duty is a so-called ‘target’ duty. The obligation is to identify the extent of the needs and then to determine the priorities for the provision of services within their area. This is a duty that can be enforced, on behalf of any child who is a child in need, by judicial review.

1.21 Individual children in need have locus to enforce these duties, either by making a complaint or representations pursuant to s 26(3) of the Children Act 1989 or by a claim for judicial review.³⁰ However, whilst an individual child in need can seek judicial review of a decision that affects them personally, the duty owed is still a general duty. Fulfilment of this duty cannot be tested on a child-by-child basis. The circumstances of the individual child must be considered in the context of the overall provision of services for children in need.³¹

²⁸ Ibid at [91].

²⁹ Ibid at [92]–[93].

³⁰ CA 1989, s 26(3) requires local authorities to establish a procedure for considering any representations (including complaints) by, amongst others, any child who is being looked after by them or who is a child in need, and the parents and others with parental responsibility for such children.

³¹ *R v London Borough of Barnet ex parte B* [1994] 1 FLR 592.

SECTION 17(2) DUTIES AND SERVICES

1.22 Section 17(2) requires every local authority to have regard to the specific duties and powers set out in Part I of Sch 2 to the Act. These duties are specific in the sense that s 17(2) and Sch 2, Pt I provide the means by which an individual child in need can enforce the general duty as it applies to them.

Schedule 2

1.23 Schedule 2 contains various provisions that are, according to the guidance that accompanied the Act, designed to help children in need to continue to live with their families and to prevent the breakdown of family relationships.³²

1.24 Certain duties are owed to children in need when they are living with their families. These are set out in Sch 2, para 8:

‘Every local authority shall make such provision as they consider appropriate for the following services to be available with respect to children in need within their area while they are living with their families—

- (a) advice, guidance and counselling;
- (b) occupational, social, cultural or recreational activities;
- (c) home help (which may include laundry facilities);
- (d) facilities for, or assistance with travelling to and from home for the purpose of taking advantage of any other service provided under this Act or of any similar service;
- (e) assistance to enable the child concerned and his family to have a holiday.’

1.25 Further duties are set out in paragraph 10 of the Schedule to require local authorities to take reasonable steps to ensure that children in need are able to remain living with their families, or, if this is not possible to at least maintain contact with the family:

‘Every local authority shall take such steps as a reasonably practicable, where any child within their area who is in need and whom they are not looking after is living apart from his family—

- (a) to enable him to live with his family; or
- (b) to promote contact between him and his family,

if, in their opinion, it is necessary to do so in order to safeguard or promote his welfare.’

³² See the original guidance issued as CA 1989 came into force: *Children Act 1989 Guidance and Regulations, Volume 2: Family Support, Day Care and Educational Provision for Young Children* (HMSO, 1991), para 2.1. See also current guidance: *The Children Act 1989 Guidance and Regulations, Volume 2: Care Planning, Placement and Case Review* (DCSF, April 2010), para 1.4.

1.26 This reflects the general, overarching duty imposed by s 17(1)(b) to promote the upbringing of children by their family of origin wherever it is possible to do so. This is explained further in the guidance issued when the CA 1989 first came into force.³³

‘Partnership with parents and consultation with children on the basis of careful joint planning and agreement is the guiding principle for the provision of services within the family home and where children are provided with accommodation under voluntary arrangements. Such arrangements are intended to assist the parent and enhance, not undermine, the parent’s authority and control’.

1.27 In addition, the further duties owed by local authorities to children in need include:

- to publish information about services provided under Part III of the Act by the local authority and (where appropriate) by other organisations, and to take reasonable steps to ensure that those who may benefit from these services receive this information;³⁴
- to maintain a register of disabled children within their area;³⁵
- to minimise the impact of disability on disabled children and to assist them to lead lives which are as normal as possible;³⁶
- to make provision for appropriate family centres in their area to provide social, cultural and recreational activities and advice, guidance and counselling;³⁷
- to consider the racial groups to which children in need in their area belong when making arrangements for day care and / or recruiting local authority foster parents.³⁸

1.28 Although local authorities are under a broad duty to provide these services to children in need, they retain a discretion as to what exactly is provided, when and how. The courts will be slow to intervene, save in cases of *Wednesbury* unreasonableness.³⁹ A local authority may decide what weight is to

³³ Ibid at para 2.1.

³⁴ CA 1989, Sch 2, para 1(2). In relation to disabled children, this duty is supplementary to the duty imposed by s 1 of the Chronically Sick and Disabled Persons Act 1970 which requires local authorities to inform individuals with disabilities who request such information of relevant services available to disabled people: see *The Children Act 1989 Guidance and Regulations, Volume 6: Children with Disabilities*, para 3.6 and Chapters 6 and 7.

³⁵ CA 1989, Sch 2, para 2.

³⁶ CA 1989, Sch 2, para 6.

³⁷ CA 1989, Sch 2, para 9.

³⁸ CA 1989, Sch 2, para 11.

³⁹ *R v London Borough of Barnet ex parte B* [1994] 1 FLR 592.

be given to the circumstances of any individual child(ren), taking into account their own financial and budgetary constraints.⁴⁰

DISCRETIONARY SERVICES

1.29 Section 17(6) empowers the local authority to provide accommodation for a child. This may include provision of accommodation for the child with his family.⁴¹ Prior to the amendment of s 17, the Children Act only made provision for children in need to be accommodated separately from their families.⁴² The inter-relationship between the provision of accommodation under s 17(6) and s 20 is complex. This subject is dealt with in detail in Chapter 4.

1.30 The services provided by a local authority in the exercise of the s 17 duty may be assistance in kind and may also include the provision of assistance in the form of cash payments.⁴³ This may be conditional upon payment for services or upon the repayment of all or part of any cash sums paid.⁴⁴ However, before providing such assistance or imposing conditions on that assistance, a local authority is required to have regard to the means of the child and his or her family.⁴⁵

1.31 In *R v Hammersmith and Fulham London Borough Council ex parte D*, the local authority was found to have acted unlawfully in offering to pay for a family to return to the mother's home country of Sweden and suggesting that they would withdraw all other forms of s 17 assistance if this offer was refused.⁴⁶ Notwithstanding the view taken by the local authority that a return to Sweden was in the best interests of the children, the mother's attitude was one of the factors for a local authority to consider when assessing the needs of the children. In the event that the mother declined to return to Sweden, the children would still be children in need and would therefore remain children to whom s 17 duties were owed.

DISABLED CHILDREN

1.32 Local authorities are required to maintain a register of disabled children within their area.⁴⁷ They are also under a duty to provide services for disabled

⁴⁰ Ibid.

⁴¹ Section 17(6) should be read alongside s 17(3) which makes it clear that services for a child in need may include the provision of support and services to the child's family.

⁴² This amendment was brought about by the Adoption and Children Act 2002, s 116.

⁴³ Section 17(6). The discretionary power to provide cash payments used to be qualified by the words 'in exceptional circumstances' but this wording is removed by s 24 of the Children and Young Persons Act 2008 which came into force on 1 April 2011.

⁴⁴ Section 17(7).

⁴⁵ Section 17(8).

⁴⁶ [1999] 1 FLR 642.

⁴⁷ CA 1989, Sch 2, para 2(1).

children designed to minimise the effect of their disabilities on those children and to enable them to live as normal a life as possible.⁴⁸

1.33 As of 1 April 2011, Sch 2 to the CA 1989 has been amended so that local authorities are now required to assist individuals who care for disabled children by making provision for them to have breaks from their caring responsibilities.⁴⁹

1.34 If a person with parental responsibility for a disabled child, who also cares for that child, asks a local authority to undertake an assessment of the carer's ability to care for the child, the local authority must do so.⁵⁰ This may then lead to the provision of services and support under s 17. Alternatively, the local authority may make payments to the carer of an amount equal to the local authority's assessment of the reasonable costs of providing the support and services required.⁵¹

1.35 A local authority cannot regard itself as discharging its general duties to disabled children under s 17 in circumstances where it is under a specific duty to a particular child under different legislation.⁵²

SERVICES TO FAMILIES

1.36 Services may also be provided to the family of a child in need pursuant to the s 17(1) duty if these services are provided 'with a view to safeguarding or promoting the child's welfare'.⁵³ This applies both to services to the family as a whole and to individual family members. The definition of 'family' includes any person with parental responsibility for the child and any person with whom the child has been living.⁵⁴

CHILD PROTECTION

1.37 Schedule 2 to the Act sets out particular duties of local authorities to children in need that are designed to protect them from neglect and abuse and to minimise the likelihood that the authority will need to take care or other proceedings in relation to such children.

⁴⁸ CA 1989, Sch 2, para 6(1).

⁴⁹ CA 1989, Sch 2, para 6(1)(c), inserted by Children and Young Persons Act 2008, s 25.

⁵⁰ Carers and Disabled Children Act 2000, s 6.

⁵¹ CA 1989, s 17A (inserted by Carers and Disabled Children Act 2000, s 7; later amended by the Health and Social Care Act 2001, s 58). The relevant regulations are the Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2009 (SI 2009/1887) and the Disabled Children (Direct Payments) (Wales) Regulations 2001 (SI 2001/2192) (W.154).

⁵² *R v London Borough of Bexley ex parte B* (1995) (2000) 3 CCLR 15, QBD. In this case, the local authority owed the child in question a specific duty to provide him with practical assistance at home under the Chronically Sick and Disabled Persons Act 1970, s 2(1).

⁵³ CA 1989, s 17(3).

⁵⁴ CA 1989, s 17(10).

1.38 Paragraph 4(1) sets out a general duty to provide services under Part III of the Act to prevent children in need from suffering ill-treatment or neglect.

1.39 Paragraph 5(1) gives local authorities a discretion to assist a person who presents a risk to a child and who is willing to move to different premises to obtain alternative accommodation. This assistance may be in the form of cash payments and is liable for means-testing accordance with s 17(7) to (9).⁵⁵

1.40 Paragraph 7 makes provision for measures to reduce the need for care or other proceedings:

‘Every local authority shall take reasonable steps designed–

- (a) to reduce the need to bring–
 - (i) proceedings for care or supervision orders with respect to children within their area;
 - (ii) criminal proceedings against such children;
 - (iii) any family or other proceedings with respect to such children which might lead to them being placed in the authority’s care; or
 - (iv) proceedings under the inherent jurisdiction of the High Court with respect to children.
- (b) to encourage children within their area not to commit criminal offences; and
- (c) to avoid the need for children within their area to be placed in secure accommodation.’

MEANING OF ‘WITHIN THEIR AREA’

Assessment

1.41 Local authorities are expected to take steps to identify children in need within their area.⁵⁶ The reference to children ‘within their area’ is to children who are physically present within the area of a particular local authority.⁵⁷ Children are physically present in the area of a particular local authority if they live in the area or go to school there, even if they are only living in the area of one local authority because they were temporarily housed there by another.⁵⁸

1.42 If more than one local authority is involved, the priority must be the needs of the child, and arguments about which authority is responsible for meeting those needs should not delay the provision of services.⁵⁹

⁵⁵ CA 1989, Sch 2, para 5(2), (3).

⁵⁶ CA 1989, Sch 2, para 1(1).

⁵⁷ *R (S) v London Borough of Wandsworth, London Borough of Hammersmith and Fulham, London Borough of Lambeth* [2001] EWHC 709 (Admin), [2002] 1 FLR 469; *R (M) v Barking and Dagenham London Borough Council* [2002] EWHC 2663 (Admin), [2002] All ER (D) 408 (Nov). In the *Wandsworth* case, the children were held to be within the area of Wandsworth (where they attended school) and Lambeth (as they were living in a hostel).

⁵⁸ *R (S) v London Borough of Wandsworth, London Borough of Hammersmith and Fulham, London Borough of Lambeth*, *ibid*.

⁵⁹ *R (M) v Barking and Dagenham London Borough Council*, n 57 above.

Provision of services

1.43 The fact that local authorities are duty-bound to identify children in need who are ‘physically present’ in their area does not always mean that a duty is owed to provide services to children in need simply on the basis of physical presence. In *R (Liverpool City Council) v Hillingdon London Borough Council* the London Borough of Hillingdon did not discharge its duty to provide accommodation to a child to whom a s 20(1) duty is owed simply by escorting the child to Liverpool where he had indicated he would prefer to live.⁶⁰

1.44 Paragraph 4 of Sch 2 to the Act states that the duty to children who are physically within the area of a particular local authority but who live within the area of another local authority is limited to informing the other local authority of the child’s circumstances:

‘(2) Where a local authority believe that a child who is at any time within their area—

- (a) is likely to suffer harm; but
- (b) lives or proposes to live in the area of another local authority they shall inform that other local authority.

(3) When informing that other local authority they shall specify—

- (a) the harm that they believe he is likely to suffer; and
- (b) (if they can) where the child lives or proposes to live.’

1.45 It is perhaps noteworthy that this Schedule was not referred to in the *Wandsworth* case, in which the High Court held that the question of how the child’s needs are to be met is one to be negotiated between the authorities involved if more than one authority is under a duty to undertake a s 17 assessment.⁶¹

CHARGING FOR SERVICES

1.46 A local authority is entitled make such charges as it considers to be reasonable for any service provided under s 17 except for the provision of advice, guidance and counselling.⁶² However, having regard to the person’s means, a local authority may not require a service user to pay more than he or

⁶⁰ [2009] EWCA Civ 43, [2009] 1 FLR 1536. Although the case of *R (S) v London Borough of Wandsworth, London Borough of Hammersmith and Fulham, London Borough of Lambeth*, was not referred to expressly by the Court of Appeal, it had been considered at first instance. The Court of Appeal overturned the decision of the Deputy High Court Judge who had concluded that the duty to provide accommodation fell to Liverpool once the child was physically present in the area of that local authority: *R (Liverpool City Council) v Hillingdon London Borough Council* [2008] EWHC 1702 (Admin), [2009] 1 FCR 252.

⁶¹ *R (S) v London Borough of Wandsworth, London Borough of Hammersmith and Fulham, London Borough of Lambeth* [2001] EWHC 709 (Admin), [2002] 1 FLR 469 at [27]–[29].

⁶² CA 1989, s 29(1).

she can reasonably be expected to pay.⁶³ Individuals in receipt of certain benefits are specifically precluded from any liability to pay a charge for s 17 services.⁶⁴

1.47 It may be a condition of the provision of s 17 support that the service-user reimburses the local authority for all or part of its value.⁶⁵ Before providing assistance or imposing conditions on such assistance, a local authority must have regard to the means of the child and of his or her parents.⁶⁶

1.48 The individuals who may be charged for these services are:

- where the service is provided for a child under sixteen, each of his parents;
- where it is provided for a child who has reached the age of sixteen, the child himself; and
- where it is provided for a member of the child's family, that family-member.⁶⁷

The CA 1989 does not provide any definition of who is a child's parent for these purposes.

Any charge that is made for these services may be recovered by the local authority as a civil debt.⁶⁸

⁶³ CA 1989, s 29(2).

⁶⁴ CA 1989, s 29(3). The benefits referred to in this subsection are income support under Part VII of the Social Security Contributions and Benefits Act 1992, any element of child tax credit other than the family element, working tax credit, income-based job-seeker's allowance and income-related employment and support allowance.

⁶⁵ CA 1989, s 17(7).

⁶⁶ CA 1989, s 17(8).

⁶⁷ CA 1989, s 29(4).

⁶⁸ CA 1989, s 29(5).