

Short Breaks – Entitlement for Children

This factsheet looks at what short breaks are, when children are entitled to short breaks and considers how you may access a short break for your child.

What is a short break?

A short break is sometimes known as respite or replacement care. It can take place during the day, evening, overnight or at weekends and can take various forms including:

- **home based support** such as sitting in services, play workers or befriending services coming into your home;
- **community based support** such as day centres, holiday and after school clubs, play schemes at local sports clubs, and other activities outside of the home such as horse riding or swimming;
- **residential support** such as short term overnight care in a care home or foster placement or hospice.

Short breaks are an important service for families with disabled children. If well arranged, they can provide the family with a break from caring, (allowing the opportunity to do activities such as sleeping, spending time with other family members, catching up with other domestic chores or pursuing leisure activities) whilst also benefiting the child with a learning disability by giving them the opportunity to experience something interesting and fun, such as going to new places, meeting different people or taking part in an activity that they enjoy independently of their family. Holidays and short breaks can be both good for the child's development as well as the family's wellbeing.

Short breaks to support family carers

The Children Act 1989 requires local authorities to provide services designed to assist family carers of disabled children ‘to continue to [provide care], or to do so more effectively, by giving them breaks from caring’.

When local authorities are planning and commissioning services, or making individual decisions they should be considering their legal duty to have regard to the needs of family carers:

“... who would be able to provide care for their disabled child more effectively if breaks from caring were given to them to allow them to:

- i. undertake education, training or any regular leisure activity,
- ii. meet the needs of other children in the family more effectively, or

iii. carry out day to day tasks which they must perform in order to run their household”

Short Break Service Statements

By law, each local authority must publish a short break service statement, which sets out the short break services available in their area, the eligibility criteria for accessing those services and how those services meet the needs of carers in the area.

The short break service statement should be available on your local authority’s website and they should provide you with a copy if you request it.

Eligibility criteria which are applied to short break services should have enough flexibility to take a particular family’s needs into account and should not just be available when a family has reached crisis point.

Whilst local authorities can provide families with access to short breaks without any needs assessment, due to funding cuts this is unfortunately increasingly rare. In the majority of cases the eligibility criteria will require an assessment of need in order for a child to access a short break provided by the local authority.

When are children entitled to short breaks and how do I access one for my child?

As mentioned above, in order to obtain a short break for your child from the local authority your child is likely to need a care assessment which assesses your child as needing a short break. We have information available on how to request an assessment for your child.

The type of short break that your child is assessed as needing will determine what type of legal duty the local authority has to provide that care.

Home based and community based short breaks

If your child is assessed as needing home based or community based short breaks then the local authority has a specific legal duty to provide them under the Chronically Sick and Disabled Persons Act 1970 (CSDPA).

The local authority cannot delay or trim the package for financial reasons. If the service is not available for any reason the local authority must provide a suitable alternative service whilst taking urgent steps to ensure that the suitable service is made available. You could also decide to have direct payments to purchase the short break yourself.

The legislation provides a list of services that local authorities must provide to disabled children. These include:

- **Practical assistance in the home (which includes home based short breaks)**

If a child is assessed as needed a home based short break such as a sitting-type service in the home, or through home based child support or play workers then the local authority will have a legal duty to provide that home based short break.

- **Recreational / educational facilities (which includes community based short breaks)**

This covers community-based activities such as day centres and after-school or school holiday clubs as well as specific recreational/educational support activities such as horse riding or swimming that the assessment of need identifies as important to the child's development and sense of well-being. Services under this provision may include an element of respite/short break, since if the child is being provided with care and support in the community, then they are having a short break from their family.

- **Travel and other assistance to access a community based activity**

When the local authority is assessing the disabled child's need for community based support, they must also consider the child's travel needs to access the service.

It is unlawful for a local authority to have a blanket policy that it will not provide such transport, for example because it expects that parents will always provide transport; or because it expects the child's mobility component of disability living allowance to be used to cover this.

- **Holidays, meals and telephones**

If a local authority has assessed that a child with a learning disability has a need for a holiday (independently of their family) then it should support the family with the cost of the holiday. Whilst the local authority must pay for the disability related cost of the holiday, it may also pay the basic cost.

However, the local authority may have additional eligibility criteria and conditions which it sets. For example, that a child can only have a holiday if they have not had one in the past five years or the holiday has to take place at a particular activity centre.

Family holidays – these may be provided under the Children Act 1989

Respite care / short breaks away from the home

Short breaks / respite may be provided in residential units, in hospices or by foster carers. If there is an actual crisis, for example if the child's carer is temporarily unable to care for

the child due to a sudden illness or the child's carer is at breaking point, then the child may need to go into emergency respite accommodation. The local authority would have a specifically enforceable duty to provide the child with that accommodation (under section 20(1) of the Children Act 1989).

For the purposes of short breaks, depending on the circumstances the child may be a "looked after" child or not. "Looked after" means that the child is in the care of the local authority but that you would retain parental responsibility.

There is statutory guidance on providing short breaks for children with disabilities. In summary, the guidance suggests that children whose welfare will be best safeguarded by becoming 'looked after' during residential short breaks include:

- children who have substantial packages of short breaks sometimes in more than one setting; and
- children whose families have limited resources and may have difficulties supporting the child or monitoring the quality of care while they are away from home.

A child who has a short break as a 'looked after' child will be appointed an independent reviewing officer to check that the placement meets the child's needs, a short break care plan will be put in place and regular reviews should happen to check that the plan is working effectively.

A child who is not a "looked after" child will not have an independent reviewing officer appointed to them.

Direct payments

If your child has an assessed need for a short break you can ask the local authority to provide you with direct payments so that you can purchase the necessary services, instead of the local authority arranging the service itself.

However, the local authority cannot force you to accept direct payments if you do not want them.

Direct payments can be used to pay a relative to provide respite care, if the relative does not live with the child. However, you cannot use direct payments to pay an adult who lives in the same property as the child to provide respite care to the child unless the local authority agrees that the payment is 'necessary for promoting the welfare of the child'.

Charging for services

Local authorities are permitted to charge for children's services. However, in reality local

authorities very rarely charge for children's services.

Challenging decisions

If your local authority will not provide your child with a service which they are assessed as needing under their care plan, or stops providing your child with the service then you may have grounds for challenging the local authority's decision not to provide that service.

As strict time limits can apply to legal challenges you should seek advice as quickly as possible to see if you have grounds to legally challenge the decision.

Other sources of short breaks

Grants may be available to help you to fund a short break for your child.

www.Turn2us.org.uk has a grants search tool which you can use.

You may be able to access short breaks independently, and pay for them yourself, if your local authority cannot or will not provide you with a service.

We hope that you have found this factsheet useful. Whilst you are here, we have a small favour to ask. More people are using our service than ever before. We can't keep up with demand. We don't want to turn people away, and we want to keep on developing more information resources like this factsheet, but we don't have enough money to expand. So you can see why we need to ask for your help. We know that our information and advice can make a real difference to the quality of life of the people we support. If people using our service could help to support us, our future would be much more secure.

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