

Community Care - Unlawful public body statements and how to tackle them

This factsheet aims to support those encountering difficulties with statutory agencies in relation to the provision of social care. Problems within social care and support can arise at any stage, and even if you know what your rights are, it can feel daunting and confusing when trying to challenge public officials. This factsheet can be read alongside the 'Jargon Buster' factsheet.

Many public officials and parents or supporters of those with a learning disability misunderstand the law, often because the law is not clear or explained to them sufficiently. As a result, myths can develop and spread across various different situations.

Common Unlawful Statements

“You have to have a diagnosis to get support”

A medical diagnosis can be crucial in terms of treatment, but it is not essential to trigger a duty to provide support.

It can take a long time to reach an accurate diagnosis, and sometimes the process of diagnosis does not always start until later in somebody's life. Despite the lack of diagnosis, it is often clear that a person has disability related needs and it would be unlawful for a public body to refuse to provide support simply because there was no formal diagnosis.

If you are being told that you need a diagnosis to get support and you need more information on how to challenge this, please contact the [Learning Disability Helpline](#).

“We don't / can't do that”

Public bodies have far-reaching powers to provide a wide variety of support to disabled people and their carers. There are very few limitations on what they can do, which means that public bodies are not allowed to have 'blanket policies' about what they won't do (unless the law allows this). An example of a situation in which a public body is allowed to have restriction on what they can do is that social services cannot provide health services, and there are some limitations on what support can be provided to people who are subject to immigration control.

“The Panel / Manager says no”

Local authorities use 'panels' of various types, for example funding panels, as a way of deciding how needs should be met.

It is often the case that a social worker has spent a long time assessing a person, identifying their needs and suggesting a package of care which is then overruled by a

senior manager or funding panel.

Panels can sometimes depart from recommendations by social workers if it can be justified, but it is commonly difficult to do this. Assessed needs must be met – the issue is how will they be met.

“If you have an IQ of more than 70, you don’t qualify for help”

An example of this may be that some local authorities suggest that people with Autism, Asperger syndrome or ADHD – high functioning or otherwise – do not qualify for support. Although public bodies are allowed to create departments that focus on specific impairment groups, they cannot refuse to provide support to somebody just because they have impairments that are outside that department’s terms of reference.

“There is a maximum amount of hours/amount of money you can receive through Direct Payments”

Direct payments are cash payments made by social services to people who have been assessed as needing support. There is a general right to have a direct payment. The amount of direct payment must be sufficient to meet the persons assessed needs. There is no upper limit on the amount of direct payments and it would be unlawful for an authority to suggest this was the case.

“We are not the authority responsible for your care and support”

Sometimes, local authorities refuse to provide support on the basis that they are not responsible as the person is ‘ordinarily resident’, for example, in another area. In situations where a person is left without support because two public bodies are arguing about who is responsible, this is unlawful. There must be no gaps in provision of support to the person while the public bodies resolve their dispute.

“The budget has been cut / the budget has run out”

This is a common one. The public body in question may agree that the disabled person or carer has needs, but will refuse to meet the need due a shortage of resources. This can be shortage of money but also shortage of actual provision, for example respite care places or adequately trained staff. It can also arise when there has previously been support in place which is suddenly cut for ‘budget reasons’.

Unqualified statements that support will either be refused or cut because of lack of money or resources are unlawful.

These are just a few examples of certain commonly-found myths. In general, any policy that seeks to place a restriction on a person’s entitlement regardless of their need is usually unlawful and you should seek clarification from the public body in question. Commonly, the frontline member of staff (who are usually social workers) are not aware that what they are saying is unlawful.

Solving the problem

If you have been told something you are unsure of, or something you know is likely to be unlawful, the first step is to get it in writing.

Make a note of what has been said – record the time, date, place and who was present when you were told the piece of information.

Mencap have produced a precedent letter ‘Can I have that in writing?’ which sets out how to frame a request of this nature.

It is usually a good idea to send the letter to the most senior person within the service in question. You can also send a copy to the authority’s Monitoring Officer. A monitoring officer is usually a solicitor or barrister, so they are more likely to pick up on any unlawful act by the local authority and help to resolve the problem more quickly than if you had just addressed it to the complaint’s department who are not legally trained and may not spot issues as quickly.

Asking the public body to clarify in writing the “unlawful statement” is useful for two reasons. Firstly, it acts as a public record of what was said. Secondly, it gives the body an opportunity to reconsider what has been said and explain that what was said was actually wrong.

Please contact the [Learning Disability Helpline](#) for advice or, if you are a member of the Legal Network, arrange to speak to a caseworker.

This factsheet was drafted using information produced by Cerebra, Cardiff Law School and Professor Luke Clements.

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. Click here to make a small donation: www.donate.mencap.org.uk/phone