

# CHAPTER 8

## Carers

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## Key Points

- Carers who are the family or friends of disabled children are entitled to separate carers' assessments – although in practice their needs are generally addressed during the disabled child's assessment.
- The purpose of a parent carer's needs assessment is: (1) to help sustain their caring role (by ensuring that the local authority support provided to disabled child is adequate), and (2) to support parent carers to work or to access education, training or leisure facilities.
- A carer's assessment should provide an opportunity for a 'private discussion' in which carers can candidly express their views.
- When assessing the needs of a carer, professionals should not assume a willingness by the carer to continue caring, or continue to provide the same level of support.
- If the carer's assessment identifies a critical or substantial risk (for example, that the caring role may jeopardise continued involvement in employment or a significant relationship) then there is an obligation on the authority to take steps to prevent this risk occurring.
- The Childcare Act 2006 requires local authorities to take action to secure sufficient childcare services exist to meet the needs of parents of disabled children in their area.
- Local authorities are empowered to provide a wide range of support services and equipment for carers.
- Where a parent carer is a disabled person, the statutory guidance advises that their community care assessment and care plan should provide for adequate supports in order to help them discharge their role as a parent.
- Young carers are entitled to separate carers' assessments and local authorities should offer assessments whenever they identify a young person as a 'carer'.
- The purpose of a young carer's assessment is to ensure that the young carer is not undertaking inappropriate caring roles.
- The young carer's assessment should ensure that the support provided to the disabled person is sufficient so as to avoid the need for a young person to have to provide such care.

# Introduction<sup>1</sup>

8.1 Families and friends provide the vast majority of most disabled children's care, and it is well recognised that these caring roles can have adverse impacts in a range of areas (see paras 1.38–1.43 above). Throughout this chapter, we refer to the family and friends of disabled children who provide care to them as 'carers'. This definition excludes paid care workers. The evidence suggests, for instance, that carers lose an average of over £11,000 a year by taking on significant caring responsibilities;<sup>2</sup> that over half of all carers have a caring-related health condition;<sup>3</sup> and that in consequence carers represent one of the UK's most socially excluded groups of people.<sup>4</sup> For parent carers the situation is no less bleak: a 2014 survey of 3,500 families found that due to financial difficulties, a third were going without heating, 31 per cent without food and 84 per cent without leisure and days out.<sup>5</sup>

8.2 Meeting the needs of carers requires effective co-operation between and within a range of public authorities. The main co-operation duties are considered at paras 2.55 and 5.20 above. In relation to the needs of specific carers, there also needs to be co-operation between departments within the same authority – and in particular between children's services and adult services. 2015 guidance<sup>6</sup> refers to a 'Memorandum of Understanding' prepared to aid joint working between children and adult social services and the guidance states that 'an updated version of this document will be made available separately' in due course.<sup>7</sup>

8.3 The 2015 guidance<sup>8</sup> also provides an overview of the strategic approach that local authorities should take to ensure that carers are identified in all contacts that adult and children's services have with the public and that the full spectrum of carers' rights are addressed in this process. The guidance indicates that this should include the two departments having a formal plan and protocol to ensure their activities are properly co-ordinated.

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<sup>1</sup> The material in this chapter draws heavily from L Clements, *Carers and their rights*, 6th edn, Carers UK, 2015.

<sup>2</sup> Carers UK, 'Out of pocket: the financial impact of caring', 2007.

<sup>3</sup> Carers UK, 'Missed opportunities: the impact of new rights for carers', 2003.

<sup>4</sup> Office of the Deputy Prime Minister, *Breaking the cycle: taking stock of progress and priorities for the future. A report by the Social Exclusion Unit*, 2004, at para 6.17.

<sup>5</sup> Contact a Family, *Counting the costs*, 2014.

<sup>6</sup> Department of Health (and others), *The Care Act and Whole-Family Approaches*, 2015, p2.

<sup>7</sup> It is understood that this document has been prepared by the Association of Directors of Adult Social Services (ADASS) and the Association of Directors of Children's Services (ADCS) and when published will be available via the Local Government Association's Care Act resources website.

<sup>8</sup> Department of Health (and others), *The Care Act and Whole-Family Approaches*, 2015, pp3–6.

8.4 Frequently, it is difficult if not impossible to say with precision which particular statutory agency is responsible for providing a particular service, or (put another way) which agency is at fault in any given situation. The experience of practising lawyers is that all too often agencies end up blaming each other and suggesting that it is to the other that complaint should be made.

## Parent carers

8.5 The Children Act (CA) 1989 (as amended)<sup>9</sup> defines a 'parent carer' as an adult 'who provides or intends to provide care for a disabled child for whom the person has parental responsibility'.<sup>10</sup> As will be seen below (see para 8.14) this definition does not cover those carers (eg adult relatives) who do not have parental responsibility – and their rights are addressed separately by the legislation.

8.6 'Parent carers' were not mentioned in any legislation prior to the enactment of the Children and Families Act (CFA) 2014. As a consequence, some authorities had been reluctant to undertake separate 'carers' assessments of parents who were caring for a disabled child. This failure was generally unlawful since the Carers (Recognition and Services) Act 1995 s1 placed (and continues to place – see para 8.14 below) a duty on authorities to assess all carers (regardless of their age) who were providing substantial amounts of care on an unpaid basis: a duty referred to on a number of occasions by the courts and ombudsman.<sup>11</sup> Through amendment, the 2014 Act now places significant additional responsibilities on authorities towards 'parent carers'.

## Strategic obligations

8.7 CA 1989 s17ZD(14) requires authorities to take reasonable steps to identify the extent to which there are parent carers within their area who have needs for support.

## Duty to assess

8.8 CA 1989 ss17ZD and 17ZE<sup>12</sup> oblige local authorities to assess parent carers<sup>13</sup> on the 'appearance of need' – ie if it appears to a local authority that a parent carer may have needs for support (or an assessment is requested by the

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<sup>9</sup> CA 1989 s17ZA(3) inserted by CFA 2014 s96.

<sup>10</sup>CA 1989 s17ZD(2) and see paras 3.13–3.15 above for the definition of a 'disabled child'.

<sup>11</sup>*R (LH and MH) v Lambeth LBC* [2006] EWHC 1190 (Admin), 25 May 2006; *HN (A Minor)* [2010] NIQB 86 (a case concerning Children (Northern Ireland) Order 1995 SI No 755 art 18A which in material terms, is indistinguishable from Carers (Recognition and Services) Act 1995 s1(2)); Complaint No 07B 04696 and 07B 10996 against Croydon LBC, 16 September 2009; and, see also Local Government Ombudsman's *Digest of Cases (Education) 2008/09*, Report 06B04654, pp14–15.

<sup>12</sup>Provisions inserted by CFA 2014 s97.

<sup>13</sup>Referred to in the Care Act 2014 as 'child's carers': ss60–62; see above.

parent). Such assessments are referred to as 'parent carer's needs assessments'. Having undertaken such an assessment, the authority must then determine whether the parent has needs for support and, if so, what those needs are.

8.9 Parent carers' needs assessments must include 'an assessment of whether it is appropriate for the parent carer to provide, or continue to provide, care for the disabled child, in the light of the parent carer's needs for support, other needs and wishes'<sup>14</sup> and must also have regard to:<sup>15</sup>

- the well-being of the parent carer,<sup>16</sup> and
- the need to safeguard/promote the welfare of the disabled child and any other child for whom the parent carer has parental responsibility.

8.10 The requirement to consider 'well-being' brings with it the duty of the authority to consider a list of factors specified in Care Act 2014 s1. These include such factors as: (a) personal dignity; (b) physical and mental health and emotional well-being; (c) protection from abuse and neglect; (d) control by the individual over day-to-day life (including over care and support, or support, provided to the individual and the way in which it is provided); (e) participation in work, education, training or recreation; (f) social and economic well-being; (g) domestic, family and personal relationships; (h) suitability of living accommodation; (i) the individual's contribution to society.

8.11 This obligation replicates and broadens the duty under the Carers (Recognition and Services) Act 1995<sup>17</sup> to consider whether the carer: (i) works or wishes to work; or (ii) is undertaking, or wishes to undertake, education, training or any leisure activity. A key ombudsman's report<sup>18</sup> in this context concerned a parent who sought direct payments to enable him to purchase respite care so that he could pursue his University's studies. In the ombudsman's opinion, there was an obligation on the local authority to ensure that the parent was not 'disadvantaged in pursuit of education/training any more than other parents'.

8.12 The legislation provides for a parent carer's assessment to be combined with other assessments – ie the assessment of the disabled child's needs (CA 1989 s17ZE(3)) and (as noted above in relation to young carers) the guidance gives emphasis to assessments adopting 'whole family approach' – see para 8.41. Although a parent carer's assessment can be combined with a disabled child's assessment, they must nevertheless be distinct in the sense that the authority can demonstrate that: (a) it does not have a blanket policy of combining such assessments in every case – ie that it will undertake separate assessments in

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<sup>14</sup>CA 1989 s17ZD(9).

<sup>15</sup>CA 1989 s17ZD(10).

<sup>16</sup>CA 1989 s17ZD(11): 'well-being' has the same meaning as Care Act 2014 s1 and includes 'control' over day-to-day life and participation in work, education, training or recreation.

<sup>17</sup>In the Carers (Recognition and Services) Act 1995 s1(2C).

<sup>18</sup>Public Service Ombudsman (Wales), Complaint No B2004/0707/S/370 against Swansea City Council, 22 February 2007, see in particular, paras 78, 133 and 137.

appropriate cases; (b) the parent carer's specific needs have been identified and addressed (or reasons provided as to why they are not eligible to be addressed); and (c) it has had specific regard to the well-being requirements for the parent carer (see para 8.9 above).

### *Copies*

8.13 Local authorities must provide parent carers and any person they choose with a copy of the assessment.<sup>19</sup> This requirement mirrors the duty under the Care Act (both for adults in need and carers<sup>20</sup>) which, in addition, requires that they be provided with copies of their care and support plans<sup>21</sup> which must be 'in a format that is accessible to the person for whom the plan is intended'.<sup>22</sup> While there is no such explicit obligation in relation to parent carers, the relevant case-law and general principles of public law must require that authorities provide copies that are intelligible for the relevant family members.<sup>23</sup>

### *Carers of disabled children who do not have 'parental responsibility'*

8.14 Due to a drafting oversight, the CFA 2014 failed to secure the rights of adults who provided unpaid care for disabled children but for whom they lacked 'parental responsibility'.<sup>24</sup> As a consequence, a grandparent, adult sibling, relative or a friend providing care would have had no rights to an assessment or support – as well as some unmarried fathers and some stepparents. The omission of such carers was clearly unintended and was resolved by a decision not to repeal the relevant provisions of the Carers (Recognition and Services) Act 1995 s1 that provide for the assessment of (non-parental) carers of disabled children.<sup>25</sup> The effect is that local authorities owe a duty to all unpaid<sup>26</sup> carers of disabled children. The obligation in relation to the assessment process of such carers is as wide

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<sup>19</sup>CA 1989 s17ZD(13).

<sup>20</sup>Care and Support (Assessment) Regulations 2014 SI No 2827 reg 3(1) and see also para 6.98 of the *Care and Support Statutory Guidance*, October 2014.

<sup>21</sup>Care Act 2014 s25(9) and (10).

<sup>22</sup>*Care and Support Statutory Guidance*, October 2014, para 10.87.

<sup>23</sup>See for example, *R v Islington LBC ex p Rixon* (1997–98) 1 CCLR 119, QBD, at 128.

<sup>24</sup>Parental responsibility (PR) is a legal status governed by CA 1989 s3(1). All mothers and most fathers have legal PR. For an overview of the law concerning PR, see Manjit Gheera, *Parental responsibility*, House of Commons Library Briefing Note, 8 September 2014. Some unmarried fathers of children lack parental responsibility – in the absence of an agreement or court order and this is also the case for some step parents.

<sup>25</sup>See Care Act 2014 and Children and Families Act 2014 (Consequential Amendments) Order 2015 SI No 914. This is, however, only a short-term 'patch': the 1995 Act creates a higher assessment threshold for carers than does CA 1989 s17ZD – albeit that in practice, little will turn on this distinction.

<sup>26</sup>Carers (Recognition and Services) Act 1995 s1(3)

ranging as that for those with 'parental responsibility' and (as 2015 guidance<sup>27</sup> makes clear) requires consideration as to:

whether the carer works or wishes to work, or whether they wish to engage in any education, training or recreation activities. The local authority then has to take the assessment into account when deciding whether to provide any services to the disabled child.

## Support services

8.15 Having undertaken a parent carer or other carers assessment, the local authority must then decide whether the parent has needs for support; whether the disabled child has needs for support; and if so whether those needs could be satisfied (wholly or partly) by services under CA 1989 s17. The parent must be given a written copy of the assessment.<sup>28</sup>

8.16 Reference is made to paras 3.62–3.99 above which describe the wide range of services that can be provided under the 1989 Act and also the Chronically Sick and Disabled Persons Act (CSDPA) 1970, s2 which can either support the carer directly (in the case of the 1989 Act) or indirectly (in the case of both the 1989 and 1970 Acts). In this context, the emphasis in CA 1989 Schedule 2<sup>29</sup> is of particular relevance – namely that services must be designed to: (1) minimise the effect of the child's disabilities; (2) give them the opportunity to lead lives which are as normal as possible; and (3) 'to assist individuals who provide care for such children to continue to do so, or to do so more effectively, by giving them breaks from caring'.

8.17 Emphasis is given to the importance of appropriate services in chapter 4 of the *Care and Support Statutory Guidance*. It is noted that:

... some parent carers need extra support to juggle caring and paid work after their child leaves full time education. Loss of paid employment can have a significant impact on the carer's wellbeing and self-esteem as well as a significant impact on the family's financial circumstances. Similar issues can affect young carers. Taking a whole family approach to care and support planning that sets out a 'five-day offer' or appropriate supported living options for a young person, and support for a carer to manage an increased caring role (that allows them to stay in paid work if they wish to do so) can help families manage the transition and save money by avoiding unwanted out-of-county placements.

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<sup>27</sup>Department of Health (et al), *The Care Act and Whole-Family Approaches*, 2015, p16 – and see also HM Government, *Working together to safeguard children*, 2015, p19, para 27.

<sup>28</sup>CA 1989 s17ZD(13).

<sup>29</sup>CA 1989 Sch 2 Pt 1 para 6 pursuant to section 17(2) of the Act.

## Respite/short break care and disabled children

8.18 The English government's report *Aiming High for Disabled Children: Better Support for Families* (2007)<sup>30</sup> highlighted the importance of short breaks in reducing the 'high levels of stress' present in many families with disabled children, stress that might otherwise 'result in family breakdown.'

8.19 As a consequence, the Children Act 1989<sup>31</sup> was amended to include a requirement that social services authorities 'assist individuals who provide care for such children to continue to do so, or to do so more effectively, by giving them breaks from caring.' This duty has been the subject of detailed regulations<sup>32</sup> and guidance,<sup>33</sup> which are also covered in chapter 3, see paras 3.92–3.97.

8.20 The regulations require that in making available breaks from caring to assist parents and others who provide care for disabled children, local authorities must: ensure that, when making short break provision, they have regard to the needs of different types of carers, not just those who would be unable to continue to provide care without a break;

- provide a range of breaks, as appropriate, during the day, night, at weekends and during the school holidays; and
- provide parents with a short breaks services statement detailing the range of available breaks and any eligibility criteria attached to them.
- 8.21 The Short Breaks for Carers of Disabled Children guidance amplifies the regulations by stressing that local authorities must ensure that:
  - short breaks are reliable and regular to best meet families' needs;
  - they try to reach groups of parents who may be more difficult to engage;
  - parents are engaged in the design of local short breaks services;
  - short breaks can build on and be offered by universal service providers;
  - they are working in partnership with health services to understand the range of short breaks services in their area and to train the workforce;
  - short breaks promote greater levels of confidence and competence for young people moving towards adult life;
  - those who use short breaks services have the chance to shape the development of those services; and
  - they continue to develop their workforce in relation to short breaks services.<sup>34</sup>

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<sup>30</sup>HM Treasury and the Department for Education and Skills, 2007, para 4.2.

<sup>31</sup>By Children and Young Persons Act 2008 s25, inserting a new para into CA 1989 Sch 2 - namely para 6(1)(c).

<sup>32</sup>Breaks for Carers of Disabled Children Regulations 2011 SI No 707.

<sup>33</sup>Department for Education, *Short Breaks for Carers of Disabled Children*, 2011.

<sup>34</sup>Department of Education, *Short Breaks for Carers of Disabled Children*, 2011, p5.

## Parent carers of disabled children in transition

8.22 The Care Act 2014 places duties on local authorities to assess the needs of disabled children<sup>35</sup> and young carers who are 'in transition' into adulthood (see paras 10.38 and 10.42) and, in addition, it obliges authorities to assess the likely needs of the adult carers of disabled children<sup>36</sup> during the child's transition. In simple terms<sup>37</sup>, the Act provides that a local authority must undertake a needs assessment of the carer of a disabled child if it considers that the carer is likely to have needs for support after the child becomes 18 and that the assessment would be of significant benefit to the carer. Such an assessment is referred to as a 'child's carer's assessment'. If a local authority decides not to undertake such an assessment it must give reasons for its refusal. See discussion below in the chapter on transition to adulthood (paras 10.30–10.35) as to how 'significant benefit' and 'likely to have needs' should be construed.

8.23 Such an assessment will generally occur at the same time as the disabled child is having his or her transition assessment. The requirements of the transition assessment are in most respects the same as those for young carers and disabled young people in transition and are analysed at para 10.24 below.

## Childcare Act duties

8.24 Childcare Act 2006 s6 requires local authorities to secure, 'so far as is reasonably practicable', sufficient childcare to meet the requirements of parents in their area who require childcare in order to work or to undertake training or education to prepare for work. In relation to disabled children, the obligation extends to childcare facilities up to 1 September after their 18th birthday. In determining whether the provision of childcare is sufficient, councils must have regard to, amongst other things, the needs of parents for childcare eligible for the childcare element of the working tax credit, and for childcare that is suitable for disabled children.

8.25 The High Court has held that a decision by a local authority to reduce its funding of nursery or other child care arrangements will be unlawful if it has not had proper regard to its duties under the 2006 Act (to secure childcare sufficient to meet the requirements of parents in the area to enable them to work or undertake education or training).<sup>38</sup>

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<sup>35</sup>Care Act 2014 ss58 and 59.

<sup>36</sup>In this context, the parent carer is referred to as a 'child's carer' - see Care Act 2014 ss60-62.

<sup>37</sup>The Act, again, contains overly complicated provisions on the issue of consent/capacity to consent and what must be included in the assessment - see footnote above.

<sup>38</sup>See *R (West and others) v Rhondda Cyon Taff CBC* [2014] EWHC 2134 (Admin) - the court also considered that the local authority had failed to have regard to the impact these changes would have on its general duties under CA 1989 s17.

## Young carers

8.26 Carers who are under the age of 18 are generally referred to as 'young carers'. Whilst the 2011 census indicated that there were over 175,000 young carers in the UK, research conducted for the BBC in 2010 suggested that there may in fact be four times as many.<sup>39</sup> A 2004 UK study estimated that a significant number (31 per cent) of children and young people who attended young carers projects and services were offering some form of care to their disabled siblings.<sup>40</sup>

8.27 2015 guidance published by the Department of Health (and others)<sup>41</sup> cited the following statistics:

- One in 12 young carers, cares for more than 15 hours per week and about one in 20 misses school because of their caring responsibilities.
- The average annual income for families with a young carer is £5,000 less than families who do not have a young carer.
- There is no strong evidence that young carers are more likely than their peers to come into contact with support agencies, despite government recognition that this needs to happen.
- Young carers have significantly lower educational attainment at GCSE level, the equivalent to nine grades lower overall than their peers eg the difference between nine Bs and nine Cs.
- Young carers are more likely than the national average to be not in education, employment or training (NEET) between the ages of 16 and 19.

8.28 The Equality and Human Rights Commission's (EHRC) in its 2010 Equality Review,<sup>42</sup> when stressing the importance of addressing the inequality experienced by young carers noted that a disproportionate number were from certain ethnic minority backgrounds (including Bangladeshi, Black African and Black Caribbean and Pakistani).

8.29 The EHRC's emphasis on considering the position of young carers from a human rights perspective is important. As Lord Kerr has observed:<sup>43</sup>

It is a universal theme of the various international and domestic instruments ... that, in reaching decisions that will affect a child, a primacy of importance must be accorded to his or her best interests. ... . It is a factor ... that must rank higher than any other. It is not merely one consideration

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<sup>39</sup>The Children's Society, *Hidden from View*, 2013.

<sup>40</sup>C Dearden, and S Becker, *Young Carers in the UK: The 2004 Report*, Carers UK and The Children's Society, 2004.

<sup>41</sup>Department of Health (and others), *The Care Act and Whole-Family Approaches*, 2015, and see also The Children's Society, *Hidden from view*, 2013.

<sup>42</sup>Equality and Human Rights Commission, *How fair is Britain?*, 2010, p33.

<sup>43</sup>*ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4.

that weighs in the balance alongside other competing factors. Where the best interests of the child clearly favour a certain course, that course should be followed unless countervailing reasons of considerable force displace them.

8.30 'Young carers' were not mentioned in any legislation prior to the enactment of the Care Act 2014 and the CFA 2014. As a consequence, some authorities had been reluctant to undertake separate 'carers' assessments of people under 18 who were acting as carers for family or friends. This failure was generally unlawful since there was a duty on such authorities to assess all carers (regardless of their age) who were providing substantial amounts of care on an unpaid basis: a duty referred to on a number of occasions by the courts and ombudsman.<sup>44</sup> The 2014 Acts are now explicit in identifying 'young carers' as rights holders: people for whom local authorities have a duty to assess and where their needs call for support – a duty to provide this under either the Care Act 2014 (if provided to an adult) or the Children Act – see below.

## Definition

8.31 The Children Act 1989<sup>45</sup> now defines a young carer as 'a person under 18 who provides or intends to provide care for another person' but it excludes those who provide this care either as part of their paid employment or as part of formal 'voluntary work':<sup>46</sup> the same definition is provided by the Care Act 2014.<sup>47</sup> 'Care' in this context includes emotional as well as 'practical support'.<sup>48</sup>

## Strategic obligations

8.32 Local authorities are now under a strategic duty to identify the extent to which there are young carers within their area who have needs for support.<sup>49</sup> This strategic planning obligation is reinforced by the Care and Support Statutory Guidance which highlights the importance of authorities being proactive in identifying young carers (particularly those not receiving services) who are in transition into adulthood and whose caring role is likely to continue. Authorities are required to consider establishing 'mechanisms in partnership with local educational institutions, health services and other agencies' and gives examples of those who might be targeted, including:

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<sup>44</sup>Complaint No 07B 04696 and 07B 10996 against Croydon LBC, 16 September 2009, and see also Cerebra Legal Entitlements Research Project, Digest of Cases 2014 (Kumar's Story at p20 and Peter's Story at p24).

<sup>45</sup>CA 1989 s17ZA(3) inserted by CFA 2014 s96.

<sup>46</sup>CA 1989 s17ZB(3).

<sup>47</sup>Care Act 2014 s63(6).

<sup>48</sup>CA 1989 s17ZB(5) and Care Act 2014 s63(9).

<sup>49</sup>CA 1989 s17ZA(12).

- young people (for example with autism) whose needs have been largely met by their educational institution, but who once they leave, will require their needs to be met in some other way;
- young people and young carers receiving Children and Adolescent Mental Health Services (CAMHS) may also require care and support as adults even if they did not receive children's services from the local authority.<sup>50</sup>

## The specific duty to assess young carers

8.33 Local authorities must undertake assessments as to whether a young carer within their area has support needs (and if so, what those needs are) if –

- a) it appears to the authority that the young carer may have needs for support, or
- b) the authority receive a request from the young carer or a parent of the young carer to assess the young carer's needs for support.<sup>51</sup>

8.34 The duty to assess is, therefore, a proactive obligation: one that is triggered by the 'appearance of need' (ie there is no requirement that a request is made). The duty arises irrespective of whether the assessment process was initiated under the Care Act or Children Act. Such an assessment is referred to as a 'young carer's needs assessment'.<sup>52</sup>

8.35 When undertaking an assessment, the authority is required to consider whether 'it is appropriate for the young carer to provide, or continue to provide, care for the person in question'.<sup>53</sup> The authority must involve the young carer, his or her parents<sup>54</sup> and any other person any of them wish to be involved<sup>55</sup> and must have regard to:<sup>56</sup>

- a) the extent to which the young carer is participating in or wishes to participate in education, training or recreation, and
- b) the extent to which the young carer works or wishes to work.

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<sup>50</sup>*Care and Support Statutory Guidance*, paras 16.18-16.19.

<sup>51</sup>CA 1989 s17ZA(1).

<sup>52</sup>CA 1989 s17ZA(2).

<sup>53</sup>CA 1989 s17ZA(7).

<sup>54</sup>CA 1989 s17ZB(2) explains that for this purpose that a 'parent' includes those that do and do not have parental responsibility for the child.

<sup>55</sup>CA 1989 s17ZA(9).

<sup>56</sup>CA 1989 s17ZA(8).

8.36 Regulations<sup>57</sup> provide the detail of the local authority 'young carer' assessment obligations. These require that authorities undertake such assessments in a manner 'which is appropriate and proportionate to the needs and circumstances of the young carer' and that in doing so they have particular regard to:

- a) the young carer's age, understanding and family circumstances;
- b) the wishes, feelings and preferences of the young carer;
- c) any differences of opinion between the young carer, the young carer's parents and the person cared for, with respect to the care which the young carer provides (or intends to provide); and
- d) the outcomes the young carer seeks from the assessment.<sup>58</sup>

8.37 As with assessments under the Care Act 2014, authorities are required to provide relevant parties<sup>59</sup> with information 'about the manner and form of the assessment' to enable the effective participation of those involved. The assessor must have sufficient knowledge and skill (having regard amongst other things to the young carer's age, sex and understanding), and be appropriately trained – and where necessary the authority is required to consult third parties with 'expertise and knowledge in relation to the young carer' and consider any other relevant assessments that have been carried out.<sup>60</sup>

8.38 Regulation 4 details what must be determined by the assessment – including:

- a) the amount, nature and type of care which the young carer provides/intends to provide;
- b) the extent to which this care is (or will be) relied upon by the family, including the wider family, to maintain the well-being of the person cared for;
- c) whether the care which the young carer provides (or intends to provide) impacts on the young carer's well-being, education and development;
- d) whether any of the tasks which the young carer is performing (or intends to perform) when providing care are excessive or inappropriate for the young carer to perform having regard to all the circumstances, and in particular the carer's age, sex, wishes and feelings;
- e) whether any of the young carer's needs for support could be prevented by providing services to – the person cared for, or another member of the young carer's family;

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<sup>57</sup>Young Carers' (Needs Assessments) Regulations 2015 SI No 527 made pursuant to the CA 1989 s17ZB(8).

<sup>58</sup>Regulation 2(2).

<sup>59</sup>Regulation 2(4) specifies that these are: (a) the young carer; (b) the person cared for; (c) the young carer's parents; and (d) any other person whom the young carer or a parent of the young carer requests should participate in the assessment.

<sup>60</sup>Regulation 3.

- f) what the young carer's needs for support would be likely to be if the carer were relieved of part or all of the tasks the young carer performs (or intends to perform) when providing care;
- g) whether any other assessment of the needs for support of the young carer or the person cared for has been carried out;
- h) whether the young carer is a child in need;
- i) any actions to be taken as a result of the assessment; and
- j) the arrangements for a future review.

8.39 In relation to (d) above, the statutory guidance<sup>61</sup> advises that when a 'local authority is determining whether the tasks a child carries out are inappropriate, it should also take into account the child's own view wherever appropriate'.

## The general assessment obligation under the Children Act 1989

8.40 The enactment of the Children and Families Act 2014 and the publication of the specific regulations<sup>62</sup> concerning the assessment of young carers have created an additional layer of assessment obligations on local authorities: specific duties that remain underpinned by the CA 1989 s17 assessment obligations on such authorities in relation to children in need. These assessment duties are considered at paras 3.33–3.43 above. In this context, however, previous guidance<sup>63</sup> remains relevant, namely that:

many young people carry out a level of caring responsibilities which prevents them from enjoying normal social opportunities and from achieving full school attendance. Many young carers with significant caring responsibilities should therefore be seen as children in need.<sup>64</sup>

## Whole family approach

8.41 Care Act 2014 s12(5) empowers authorities to combine a needs assessment of an adult in need or a carer, with a young carer's assessment as well as any subsequent care and support plan (s25(11)): in both cases, the decision to combine is contingent on the agreement of both parties. In similar terms, CA 1989 s17ZB(7) enables Children Act assessments of young carers to be combined.

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<sup>61</sup>*Care and Support Statutory Guidance*, para 6.73; see also Department of Health (et al), *The Care Act and Whole-Family Approaches*, 2015, p34.

<sup>62</sup>Young Carers' (Needs Assessments) Regulations 2015 SI No 527 (pursuant to CA 1989 s17ZB(8)).

<sup>63</sup>See for example Social Services Inspectorate, Guidance letter CI (95)12, Annex A, para 1.1.

<sup>64</sup>See also Department of Health, *The Children Act 1989 Guidance and Regulations, Volume 2*, 1991, para 2.4, which emphasises that 'the definition of "need" in the Act is deliberately wide to reinforce the emphasis on preventive support and services to families'.

8.42 The [Young Carers' Assessments Regulations](#) <sup>65</sup> require authorities to consider whether to combine assessments in such cases – and the consultation document accompanying the draft regulations explained that the intention was to promote a 'whole family approach' to assessments:

... an assessment that takes into account and evaluates how the needs of the person being cared for impact on the needs of the child who is identified as a possible young carer, or on any other child or on other members of the household. This approach also allows the local authority to combine a young carer's needs assessment with any other assessment in relation to the young carer, the person cared for or another member of the young carer's family.

8.43 The [statutory guidance](#) explains the intention behind the 'whole family approach' and the obligations it places on authorities.<sup>66</sup> This guidance has been augmented by 2015 good practice guidance.<sup>67</sup>

8.44 In summary, the [statutory guidance](#) requires that authorities must: consider the impact of the needs' of the person cared for on family members (and others);

- identify any children who are involved in providing care;
- 'where appropriate' consider whether the child or young carer should be referred for a young carer's assessment or a needs assessment under the Children Act 1989, or a young carer's assessment under section 63 of the Care Act 2014;
- ensure that adults' and children's care and support services work together – for example by sharing expertise and linking processes;
- (where it appears that a child is involved in providing care) consider:
  - the impact of the person's needs on the young carer's well-being, welfare, education and development;
  - whether any of the caring tasks the child is undertaking are inappropriate and if they are, should consider how supporting the adult with needs for care and support can prevent the young carer from undertaking this care. Inappropriate caring responsibilities are defined in the guidance (see para 8.52 below).

8.45 2015 guidance<sup>68</sup> advises that a 'whole-family approach' would ensure that family-related questions are embedded in processes at first contact and subsequently, such as:

- Who else lives in your house?

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<sup>65</sup>Young Carers' (Needs Assessments) Regulations 2015 SI No 527 reg 4(5).

<sup>66</sup>*Care and Support Statutory Guidance*, paras 6.65–6.73.

<sup>67</sup>Department of Health (et al), *The Care Act and Whole-Family Approaches*, 2015, pp8–9.

<sup>68</sup>Department of Health (et al), *The Care Act and Whole-Family Approaches*, 2015, pp8–9.

- Who helps with your support and who else is important in your life?
- Is there anyone that you provide support or care for?
- Is there a child in the family (including stepchildren, children of partners or extended family)?
- Does any parent need support in their parenting role?

8.46 It adds that whatever assessment process is being used/undertaken – in every case a question must be asked as to whether there are any children in the household and if they are undertaking any caring role.<sup>69</sup>

## Copies

8.47 Local authorities must provide the young carer, his or her parents, and any person they chose with a copy of the assessment.<sup>70</sup> This requirement mirrors the duty under the Care Act (both for adults in need and carers<sup>71</sup>) which in addition requires that they be provided with copies of their care and support plans<sup>72</sup> which must be ‘in a format that is accessible to the person for whom the plan is intended’.<sup>73</sup> While there is no explicit obligation in relation to young carers, the relevant case-law and general principles of public law must require that authorities do provide copies that are intelligible for the relevant family members.<sup>74</sup>

## Care planning and the duty to provide support

8.48 Once a local authority has completed a young carers needs’ assessment and (almost invariably) an assessment of the needs of the person for whom he or she provides care, the authority must then decide what support it is going to provide. This could take the form of support provided directly to the young carer and/or support for the person being cared for.

8.49 Where a young carer is undertaking inappropriate care, the local authority is under a duty to address this. It has discretion about whether to do this by providing care and support to the person being cared for or by providing support services directly to the young carer – but there is a duty to ensure that underlying problem (the inappropriate care) is addressed. As the former Commission for

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<sup>69</sup>Department of Health (et al), *The Care Act and Whole-Family Approaches*, 2015, p15.

<sup>70</sup>CA 1989 s17ZA(10).

<sup>71</sup>Care and Support (Assessment) Regulations 2014 reg 3(1); see also the *Care and Support Statutory Guidance*, 2014, para 6.98.

<sup>72</sup>Care Act 2014 s25(9), (10).

<sup>73</sup>*Care and Support Statutory Guidance*, para 10.87.

<sup>74</sup>See for example, *R v Islington LBC ex p Rixon* (1997–98) 1 CCLR 119, QBD, at 128.

Social Care Inspection noted in this context 'some practitioners appear to think [incorrectly] the discretion is about whether to help carers'.<sup>75</sup>

8.50 If the authority decides that support is required it will be provided under the Children Act 1989 s17 (either to the disabled child or to the carer) although for disabled children support can additionally be provided under the Chronically Sick and Disabled Persons Act 1970 (see paras 3.66–3.78 above). If the young carer is providing support for a disabled adult<sup>76</sup> then any care and support provided to the adult as a consequence (ie to replace the care provided by the young carer) would derive from the Care Act 2014.

8.51 While consideration of the legal duties that arise in cases where a young carer is providing support for a disabled adult is outside the scope of this text<sup>77</sup> it should be noted that the adult in need would be assessed against the scale of eligibility set out in the relevant Eligibility Criteria regulations.<sup>78</sup> Regulation 2(2)(j) of these regulations provides that a significant impact on well-being that arises in consequence of an inability to carry 'any caring responsibilities the adult has for a child' may result in the adult being eligible for care and support services. In such situations (as research has suggested), the local authority should:

... 'think parent' and view disabled parents in the same way as non-disabled parents: the vast majority want to parent their children well. They may require additional support to do this, including where mainstream sources of parenting and family support for non-disabled parents are inaccessible to disabled people.<sup>79</sup>

#### Inappropriate care

8.52 On the definition of 'inappropriate care', consideration of the Care and Support Statutory Guidance is of relevance (even though it is directed primarily at young carers who care for adults) since it gives clear examples of what would be considered 'inappropriate'. In this respect, it remedies to some extent the deficiencies in the Working Together guidance where such examples ought also to be located. The [statutory guidance](#) states that:

Children should not undertake inappropriate or excessive caring roles that may have an impact on their development. A young carer becomes vulnerable when their caring role risks impacting upon their emotional or physical wellbeing and their prospects in education and life. ... . A local

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<sup>75</sup>Commission for Social Care Inspection, *Cutting the cake fairly: CSCI review of eligibility criteria for social care*, 2008, para 3.22.

<sup>76</sup>A disproportionate number of disabled parents have disabled child, see chapter 1 at para 1.30.

<sup>77</sup>For further analysis see L Clements, *Carers and their Rights*, 6th edn, Carers UK, 2015, and L Clements *Community Care and the Law*, 6th edn, LAG, 2016.

<sup>78</sup>Care and Support (Eligibility Criteria) Regulations 2015 SI No 313.

<sup>79</sup>R Olsen and H Tyers, *Supporting disabled adults as parents*, National Family and Parenting Institute, 2004.

authority should consider how supporting the adult with needs for care and support can prevent the young carer from under taking excessive or inappropriate care and support responsibilities. Where a young carer is identified, the local authority must undertake a young carer's assessment under Part 3 of the Children Act 1989.<sup>80</sup>

8.53 The Care and Support Statutory Guidance advises that when a 'local authority is determining whether the tasks a child carries out are inappropriate, it should also take into account the child's own view wherever appropriate'.<sup>81</sup> The obligation to ensure that young carers do not undertake inappropriate care is picked up again in the guidance which advises that where an authority becomes aware that the child is carrying out such a caring role then the adult should be offered a needs assessment under the Care Act 2014 and the young carer an assessment under either the Care Act 2014 or the Children Act 1989 and whichever route is chosen the local authority must consider:

- the impact of the person's needs on the young carer's wellbeing, welfare, education and development;
- whether any of the caring responsibilities the young carer is undertaking are inappropriate.<sup>82</sup>

8.54 As a result of such an assessment the authority must consider 'how supporting the adult with needs for care and support can prevent the young carer from undertaking excessive or inappropriate care and support responsibilities'.<sup>83</sup> Logically, the same advice would apply if the person being cared for was not a disabled adult, but a disabled child. Examples of the harm that may result to the young carer where there is a lack of support, include impaired access to education (eg regular absence from school or impacts upon their learning) and impaired ability to build relationships and friendships.<sup>84</sup> The statutory guidance also provides examples of 'inappropriate caring responsibilities' including the young person:

- providing personal care such as bathing and toileting;
- carrying out strenuous physical tasks such as lifting;
- administering medication;
- maintaining the family budget;
- emotional support to the adult.<sup>85</sup>
- Providing direct support for a young carer under the Children Act 1989

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<sup>80</sup>*Care and Support Statutory Guidance*, para 2.49.

<sup>81</sup>*Care and Support Statutory Guidance*, para 6.73; see also Department of Health, *The Care Act and Whole-Family Approaches*, 2015, p34.

<sup>82</sup>*Care and Support Statutory Guidance*, paras 6.68–6.69.

<sup>83</sup>*Care and Support Statutory Guidance*, para 6.71.

<sup>84</sup>*Care and Support Statutory Guidance*, para 6.71.

<sup>85</sup>*Care and Support Statutory Guidance*, para 6.72.

8.55 There will also be situations where a local authority may decide it is in the best interests of a young carer to provide services directly to him or her. This will generally arise where the caring role is considered unavoidable – or where an older young carer makes an informed decision that they is what they want to do. In such situations, the support would also, generally, be provided under CA 1989 s17 (and the nature of this support is considered at para 3.79 above).

8.56 Whenever it decided that services should be required – these should be ‘provided without delay’<sup>86</sup> – and, as the Working Together (2015)<sup>87</sup> guidance states:

A good assessment will monitor and record the impact of any services delivered to the child and family and review the help being delivered. Whilst services may be delivered to a parent or carer, the assessment should be focused on the needs of the child and on the impact any services are having on the child.

8.57 As with care planning duties for adults, support plans should be agreed with other professionals and the child and their family and ‘should set out what services are to be delivered, and what actions are to be undertaken, by whom and for what purpose’.<sup>88</sup> They should also ‘be reviewed regularly to analyse whether sufficient progress has been made to meet the child’s needs and the level of risk faced by the child’.<sup>89</sup>

## Timescale for assessments

8.58 All assessments should be completed without delay and in this respect see the general comments at para 3.34 above.

## Young carers in ‘transition’ to adulthood

8.59 The rights of young carers as they move into adulthood are addressed in chapter 10, see paras 10.42. In essence, carers aged over 18 are entitled to a transition assessment under Care Act 2014 ss63–64 and will be entitled to support in their caring role after this assessment if they meet the Care Act eligibility criteria. Support for young carers must remain in place pending the completion of this assessment and decision-making process (s66).

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<sup>86</sup>*Working Together*, 2015, para 30.

<sup>87</sup>*Working Together*, 2015, para 30.

<sup>88</sup>*Working Together*, 2015, para 53.

<sup>89</sup>*Working Together*, 2015, para 55.

## Parent carers as disabled children 'transition' to adulthood

8.60 Similarly, the rights of parent carers as the child they care for becomes an adult are addressed in chapter 10, see para 10.38. Again, the parent carer is entitled to a transition assessment and will be entitled to support in their caring role after this assessment if the eligibility criteria are met. Again, support must remain in place pending the completion of this assessment and decision-making process (s66).

8.61 Chapter 16 of the Care and Support Statutory Guidance provides considerable detail on the way authorities should approach their duties in relation to disabled children; the parents of disabled children and young carers. Importantly, local authorities are not obliged to move responsibility from children's social care to adult care once the young person becomes 18. The statutory guidance expresses the view that in general this move will often begin 'at the end of a school term or another similar milestone, and in many cases should be a staged process over several months or years'.<sup>90</sup>

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<sup>90</sup>*Care and Support Statutory Guidance*, para 16.61.