

The Islington Judgement

Extract from Every Disabled Child Matters Document: Calling for Clarity – Eligibility criteria for short breaks

In 2009 a judicial review, *R (JL and LL) v Islington*⁹, found that changes Islington Council had made to eligibility criteria, which significantly reduced one family's package of short breaks, did not meet legal requirements. The judge, Mrs Justice Black, found that Islington's eligibility criteria were unlawful in so far as they made no distinction between services the authority had a power to provide under s 17 of the Children Act 1989 and those that they had a duty to provide under s 2 of the Chronically Sick and Disabled Persons Act 1970¹⁰.

In her judgment, Mrs Justice Black stated that there is a pressing need for guidance in relation to the provision of services for disabled children, which should build on and improve the FACS guidance for adult services. Eighteen months have passed since the judgment and the need for this clarification remains. An evaluation of short break pathfinder authorities said:

*“Almost all Pathfinder sites stated that they are waiting for and expecting some further national guidance and/or clarity on (eligibility criteria) and so local innovation and initiative has perhaps been suppressed because of this expectation.”*¹¹

Parents of disabled children have also called for clarity on eligibility criteria: *“Families found eligibility criteria confusing, illogical and likely to change without notice. They believed that services could not explain why certain criteria applied in one service but not in another. It seemed that far from ensuring that services were there for the people who need them, eligibility criteria and defined access routes existed in order to keep families out of contact with services and were based on arbitrary decisions.”*¹²

However it may be the inherent complexities of the law that has prevented Government from issuing guidance so far:

*“The complexities inherent in any attempt to set eligibility criteria for disabled children's services may explain why, despite (Mrs Justice Black) stating that there was „a pressing need for guidance on eligibility criteria... no such guidance has been forthcoming from Government”.*¹³

⁹ The court found in favour of the claimants, JL and LL, a young disabled man and his mother who also has health problems. Their package of services had been reduced by almost half as a result of new eligibility criteria introduced by Islington in 2007. The judge found that these criteria were unlawful because they failed to distinguish between services the council had a duty to provide and those that they had only a power to provide. Islington was also found to have acted unlawfully because they had not shown proper regard to their duties to promote disability equality when setting the criteria.

¹⁰ The judgment can be viewed here:

<http://www.bailii.org/ew/cases/EWHC/Admin/2009/458.html>

¹¹ DCSF (2010) *Short Breaks Pathfinder Evaluation: Interim Report - End of Phase One*

¹² Audit Commission (2003) *Services for Disabled Children*

¹³ S. Broach (2010) *Defending Services for disabled children: using the law to fight the cuts*, Doughty