



## Why people with community support needs **sometimes need legal advice**

*Julie Burton runs a highly specialist legal aid practice in Bangor, North Wales. Julie shares some of the cases she has been involved in (\*all names changed) and suggests that within the current economic climate more and more people will need to turn to the law to protect their rights*

### **Sam\***

Sam had a very severe learning disability with epilepsy. His mother had been seeking respite care for him for years, repeating that request at every review of care without any action being taken. She was told the local authority had no respite facilities so this could not be provided although the need for it was acknowledged. Unable to cope, eventually she sought legal advice. After issuing proceedings for judicial review of the authority's failure to meet Sam's assessed need for respite care, a respite facility was commissioned and opened and Sam received regular respite care thereafter in accordance with his assessed need.

### **Maisie\***

Maisie had a learning disability but was able, with support to look after herself to a reasonable level. She lived at home with her mother. She had little or no input from Social Services. She got in with a bad crowd, started drinking, and her overall presentation deteriorated. She set a fire and was arrested, then detained under the Mental Health Act for assessment of her mental disorder. Her mother recognised the need for support for her daughter but was desperately opposed to her being detained in hospital. She contacted a solicitor. Maisie was supported to put in an application to the mental health review tribunal and her mother was advised of her

right to request her daughter's discharge. She exercised this right and Maisie was released. Social Services were asked to carry out an assessment of needs and a comprehensive support package was provided.

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### **Ffion\***

Ffion lived at home, had left school at 19 and was attending college. She had a learning disability and was unable to move from her parents home, even though she wanted to be independent of them, because she recognised, as did her parents, that she would need a fairly high degree of support to be able to live independently of them. Her parents' attempts, over many months, to get Social Services to secure suitable accommodation for her had proved fruitless. Ffion and her mother sought legal advice. Social Services were asked to carry out an assessment of her needs and those of her parents as carers and a complaint was lodged in relation to the failure to do so thus far. As a result, she was swiftly offered a 12 month placement in an active assessment unit with the aim of maximising independence before moving into suitably supported accommodation thereafter.

### **Laurence\***

Laurence had multiple sensory impairments as a result of which he had no communication and required 24 hour care. His parents sought an assessment of his needs and theirs as carers and the delivery of a comprehensive package of care. After many months of trying they sought legal advice. His mother had had to give up a successful business in order to care for Laurence. An Assessment was eventually completed (the delay became the subject matter of a successful application to the local

government ombudsman and they received compensation). It then became clear that Social Services were simply incapable of delivering the package of care needed to meet assessed needs. A compromise was eventually negotiated whereby any assessed need not met by Social Services commissioned carers would be paid to the parents by way of direct payments to enable the parents to make their own arrangements rather than lose the care altogether.

### **Cara\***

Cara had a profound learning disability and challenging behaviour. She had lived for many years in a highly supported nursing home, funded by her local health board (LHB). Her mother had been seeking proper transport arrangements for her for many months. Her challenging behaviours increased

from time to time and periodically reached a high level but these were appropriately and sensitively managed by nursing home staff. Social Services initiated an ill thought out Protection of Vulnerable Adults (POVA) investigation, and concluded that she was inappropriately placed. Without involving her family in either the POVA or their decision making, Social Services and the LHB made arrangements to move her. The parents were advised at 6.00pm that she was to move that evening. They contacted a solicitor who initiated emergency injunction proceedings. She remained in her nursing home that night and as the matter was further investigated, the concerns were shown to be unfounded and the decision to move her was reversed. Additional support was eventually agreed, including proper transport arrangements



# Llais

These are examples of the kind of cases that community care lawyers deal with day to day. Clients come from all walks of life and have a wide variety of disabilities but one thing in common – they are desperate for help to secure support.

## Not Aware

Many people with disabilities, or their families and friends, are simply not aware that they can get support or what support they are entitled to. At its most basic, some one with an appearance of need (i.e. some one with a physical or learning disability or a mental health problem) is entitled to have a thorough assessment carried out to see if they do in fact have “eligible” needs. Not all needs are eligible, but in general terms, where the consequences of not delivering a support service would be critical or substantial, support must be provided. Often people are struggling to get by with a minimal level of help, unaware that they can ask for more.

Many people providing care informally are unaware that they are in fact “carers” with a recognised status in law, with an entitlement to an assessment of needs in their own right as carers and to services to assist them in their caring role. Many more are unaware that their willingness to

provide care informally need not be at the cost of their career or social life.

By the time a service user or their carers have found their way to a community care

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lawyer they may be at the end of their tether. Many may be put off seeking legal advice by what they know about solicitors’ charges – which can indeed be very high. However, legal aid is likely to be available to those who meet the legal aid means test. It is the income and savings of the person in need – the service user usually – that is taken into consideration and in general terms, if that person is in receipt of disability related benefits, they are likely to qualify.

## Solutions

There is rarely a quick fix but with time, often a satisfactory solution can be found. Cases may relate to:

- A failure to assess needs (service user and carer)
- A failure to provide support to meet assessed and eligible needs (and to review the support being provided when very evidently people are struggling)
- A disagreement over how to meet assessed needs
- An argument between different local authority social services departments over which one is responsible to provide care
- A dispute over whether care is “social care” (and therefore subject to means testing and charging for those with the means to pay) or “health care” which is commissioned and paid for by LHBs and free to the service user
- The need for a Disability Facilities Grant (DFG)
- Whether services should be provided by directly commissioned or through Direct Payments which gives the service user their own budget with which to purchase their own care as they see fit



These problems may be addressed, depending on the circumstances, by:

- In an urgent case, an application to the High Court for judicial review (e.g. of a failure to assess or assess lawfully/adequately, or of a failure to provide services to meet needs)
- More often, by advising Social Services of the circumstances of the case, pointing out their failures, ensuring that they undertake a lawful assessment or prepare a lawful care plan and negotiating a settlement. Sometimes, despite best efforts, judicial review may be required after many months of negotiating
- By using the local authority or Health complaints procedure and, if local resolution fails to address the problem, by taking cases to the Ombudsman

**Only a minority of cases actually end up in court.**

There are not many solicitors specialising in this complex area of law, not least because the vast majority of cases are funded through legal aid – and many lawyers no longer take on legal aid cases. There are only about 60 firms in England and Wales who provide expert legal advice in community care law. But the job satisfaction for those who do this work is huge.



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The bottom line is that where an eligible assessed need has been recognised, Social Services owe a duty to the service user to meet that need so recourse to the law will remain an option.

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There is likely, in the coming months and years, and following several years of hard cut backs in local government funding, to be no shortage of work for them, as Social Services departments seek to cut services in order to meet budgetary constraints. The bottom line is that where an

eligible assessed need has been recognised, Social Services owe a duty to the service user to meet that need so recourse to the law will remain an option.

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