

CHAPTER 6

Housing

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Key points

- Like all children, disabled children and their families need suitable housing. This may mean that specific adaptations are required to meet individual needs, or may mean that accommodation in a particular area or of a particular size or type is needed.
- Housing authorities and other public bodies, including children's services authorities and health bodies, have duties to co-operate to ensure that disabled children's housing needs are met.
- Whilst families with disabled children may benefit from the statutory protection for 'homeless' people, including in situations where they have accommodation but it is so unsuitable for their needs that it is not reasonable for them to continue to live there, recent changes mean that a homelessness application may no longer be an available or appropriate route to suitable social housing.
- Families who need to move to accommodation which meets the needs of their disabled children need to be informed about the policies and practice of the relevant housing providers in the area they want to live in.
- Where inadequate housing is putting a disabled child at risk of harm or impacting on the child's family's ability to meet their needs, this should be addressed in an assessment of the child's need for services under Children Act 1989 s17 (see chapter 3). Any assessment or planning arising from the assessment which ignores housing needs is unlikely to be lawful.
- Families with disabled children who live in accommodation which does not meet their needs may be able to obtain 'priority' to enable them to 'bid' successfully for a suitable home using local authorities' choice based lettings schemes, or persuade a local authority to make a direct allocation of a suitable home. Social workers and other professionals working with the family, including occupational therapists, should liaise with and influence housing authorities when they decide whether to provide alternative accommodation.
- The main route for families with disabled children to secure adaptations to make their home safe and accessible for their child is through a disabled facilities grant (DFG).
- DFGs must be paid to eligible individuals if the mandatory requirements for the grant are met.
- The maximum amount of a DFG is currently £30,000 in England.
- Housing authorities have powers to supplement the DFG to meet the cost of more expensive works or to pay for adaptations which fall outside the criteria for a DFG.
- If a disabled child has an assessed need for an adaptation to his or her home which costs more than the maximum amount for a DFG, the law may

require the shortfall to be met by the children's services authority and/or the housing authority.

- It will not be lawful to refuse to make an adaptation to meet an assessed need solely by reason of resource shortfalls (costs or human resources).

Introduction

6.1 Appropriate housing is a foundation of the right to an ordinary life for disabled children. As with many areas covered in this book, disabled children have the same basic housing needs as their non-disabled peers. However, many disabled children also require adaptations to make their homes safe and reasonably accessible for them to live in. For some disabled children, for instance those with autism or those who use bulky equipment, the need may simply be for more space than would be considered necessary for a non-disabled child. 2000 practice guidance to the Children Act (CA) 1989 noted that 'when houses are well adapted for a particular child, the family's life can be transformed'.¹ Yet as has been noted in chapter 1 (para 1.37 above), many families with disabled children currently live in housing which is restrictive and unsuitable for both the child or children and their carers and siblings.

6.2 These families also frequently suffer from overcrowding, which is harder to deal with because of the impact of the needs of their disabled children. Other housing difficulties often have a particularly acute impact on disabled children. For example, in areas of the country where there is a shortage of ground floor accommodation or housing with exclusive access to a garden or play area, disabled children may be more vulnerable to risks such as a risk of falling from height, or may find that they are not able to have the access to outdoor space and physical exercise that they require because of difficulties in accessing public play spaces. Some children have health difficulties which are particularly sensitive to common problems in poor quality housing such as cold, damp and mould growth.

6.3 This chapter does not attempt to set out all the duties owed to children and families under the Housing Act 1996 and related legislation. Not only would this be impossible given the limited space, but also a number of other excellent handbooks can provide this information.² This chapter instead focuses on the specific housing issues affecting families with disabled children.

6.4 Housing duties are owed by housing authorities, which will be part of the same (unitary) local authority as a social services authority in some areas but in other areas will be a different authority; the housing authority will be the district council whereas the social services authority will be the county council. This chapter focusses in particular on the duty to make adaptations to the home of a disabled child through the use of a disabled facilities grant (DFG) and/or direct provision under the Chronically Sick and Disabled Persons Act (CSDPA) 1970 (see paras 6.41–6.77 below).³ The chapter also looks specifically at the ways in which families with disabled children may approach their local housing authority for assistance in obtaining suitable accommodation, and briefly at the additional difficulties homeless families with disabled children face at a time of an acute

¹ Department of Health, *Assessing children in need and their families: practice guidance*, 2000, para 3.115.

² See, for example, D Astin, *Housing law handbook*, 3rd edn, LAG, 2015, and A Arden QC, E Orme and T Vanhegan, *Homelessness and allocations*, 9th edn, LAG, 2012.

³ This material draws heavily from L Clements, *Community Care and the law*, 6th edn, LAG, 2016.

housing shortage. The provision of accommodation under the Children Act (CA) 1989 to homeless children (section 20) is dealt with in chapter 3, see paras 3.136–3.143.⁴

Responsibilities of housing authorities and duties to co-operate

6.5 In meeting their responsibilities to consider housing conditions and provision in their area, housing authorities are obliged under the CSDPA 1970 s3⁵ to have specific regard to the needs of disabled people, including disabled children. This duty is exemplified in practice guidance issued in England in 2006⁶ which calls for the 'social inclusion of all citizens' and requires housing authorities to counter 'disabling environments' through planning and housing design.

6.6 When deciding who will have priority for public housing in their area, local authorities must give a 'reasonable preference' to individuals (including disabled children) who need to move on medical or welfare grounds. Local authorities are required to publish a set of rules which explain how they decide who gets 'social housing'.⁷ The term 'social housing' is used to describe council housing and housing provided by housing associations.⁸ These rules are often described as 'allocation schemes' and the queues or waiting lists for social housing are often referred to as 'housing registers'. A family's position on the housing register, therefore, becomes a material consideration in relation to any future assessment of their social care needs⁹ which would include an assessment under the Children Act 1989 (see paras 3.30–3.46).

6.7 There is an obvious requirement for housing authorities and children's services authorities (as well as the NHS where appropriate) to co-operate to

⁴ See I Wise QC, S Broach, J Burton, C Gallagher, A Pickup, B Silverstone and A Suterwalla, *Children in need: local authority support for children and families*, 2nd edn, LAG, 2013, at chapter 6 for the powers and duties to support migrant families, including through the provision of accommodation under CA 1989 s17.

⁵ As inserted by the Housing (Consequential Provisions) Act 1985 s4 and Sch 2 para 20.

⁶ Department of Communities and Local Government/Department for Education/Department of Health, *Delivering housing adaptations for disabled people: a good practice guide*, 2006.

⁷ Housing Act 1996 s166A

⁸ In some parts of the country all accommodation which was previously provided by the local authority is now owned by housing associations. Elsewhere, social housing is provided by a mix of local authority and housing association landlords but almost all housing association accommodation is now allocated by nominations from local authorities. Nominations are defined as '**allocations**' and so access to housing association accommodation is usually through the local authority's allocation scheme which in most areas provides a single route to social housing.

⁹ *R (Ireneschild) v Lambeth LBC* [2006] EWHC 2354 (Admin); (2006) 9 CCLR 686. Approved by the Court of Appeal in [2007] EWCA Civ 234 at [64].

ensure that the housing needs of disabled children are met. The joint working duty is reinforced by statute – primarily Children Act (CA) 2004 s10 (see para 2.52 above) and Housing Act (HA) 1996 s213. In relation to this general obligation, 1992 guidance¹⁰ stated:

Social services authorities and housing should construct an individual's care plan with the objective of preserving or restoring non-institutional living as far as possible, and of securing the most appropriate and cost-effective package of care, housing and other services that meets the person's future needs ...

6.8 Housing authorities are required to have a homelessness strategy which seeks to prevent homelessness, including arrangements for satisfactory provision of support for people at risk of homelessness.¹¹ The 2006 Homelessness Code of Guidance stresses the importance of social services authorities, including children's services authorities, working together to develop this strategy and prevent homelessness for specific groups, which would include families with disabled children.¹² Examples of collaborative working are listed at para 5.6 of the Code and include joint protocols for referral of clients between agencies.¹³

6.9 The local government ombudsman has held it to be maladministration if a council's housing department receives a homelessness application from someone with clear social care needs (in this case a young woman with schizophrenia) but fails to make an immediate referral to their social services department.¹⁴

6.10 When a family becomes homeless (including in circumstances where the homelessness duty arises because there is currently no accommodation available which it would be reasonable for the family with a disabled child to continue to occupy: see para 6.18 below), the local housing authority's duty to provide accommodation both pending enquiries¹⁵ and following acceptance of what is often referred to as a full housing duty¹⁶ is a duty to provide suitable accommodation.¹⁷

¹⁰Department of Health and the Department of the Environment, *Housing and community care*, LAC(92)12/DOE Circular 10/92, para 16. It is unclear as to whether this guidance has been revoked but, in any event, the stated principles of good practice will continue to be valid.

¹¹Homelessness Act 2002 s3.

¹²Department of Communities and Local Government, *Homelessness code of guidance for local authorities*, 2006, para 1.6.

¹³See also *R (G) v Southwark LBC* [2009] UKHL 26 at [33]; (2009) 12 CCLR 437.

¹⁴Complaint against Cardiff County Council Public Services Ombudsman for Wales, Case no 2009/00981, 15 March 2011.

¹⁵Housing Act 1996 s188

¹⁶Housing Act 1996 s193

¹⁷Housing Act 1996 s206; see also the Homelessness (Suitability of Accommodation) Orders 2003 (SI No 3326) and 2012 (SI No 2601) and the Code of Guidance (footnote 12 above) in particular at para 17.5

6.11 Duties to co-operate with housing authorities also extend to health bodies: as we note above (see para 5.20), NHS Act 2006 s82 places an obligation on NHS bodies and local authorities to co-operate with one another in order to 'secure and advance the health and welfare of the people of England and Wales'. Although this longstanding duty has been stressed in many policy documents,¹⁸ the evidence suggests that its operation leaves much to be desired. By way of example, in 2008, the ombudsman criticised as 'appalling' the failure of Kirklees MBC to make suitable adaptations to the home of a quadriplegic young man following his discharge from hospital, with the result that he was confined to two unsuitable rooms without suitable facilities for washing for over 18 months.¹⁹

Families with disabled children becoming 'homeless'

6.12 Duties owed by local authorities to families with disabled children under Part VII of the Housing Act 1996, which governs support for homeless people, arise when families become 'homeless' for any reason. There may be circumstances where current housing conditions for a disabled child are so unsuitable that even though the family has housing, the family members should be treated as 'homeless'.²⁰ Families in these circumstances may wish to require a local authority to assess a homelessness application, but should always also ensure that an application for longer-term social housing is also assessed at the same time. A homelessness application will only deal with a family's immediate, urgent housing needs. To obtain settled long-term housing, an application under Part VI of the Housing Act 1996 is required.

6.13 Homeless families which include disabled children face particular difficulties. Many local authorities will not provide temporary accommodation until the day of eviction and will refuse to carry out an assessment about what sort of accommodation is required in advance of the day of eviction. Many families are provided with bed and breakfast or hostel accommodation with shared facilities which may be some distance from the family's previous home and support network. Shared accommodation or accommodation in a different area, far from schools, health and social care services may cause particular difficulties for families with disabled children. Temporary accommodation in a different local authority may also mean that social care and education duties shift from one authority to another. Established routines for travel to and from school may be disrupted. Sharing kitchen or bathroom and toilet facilities may cause particular difficulties.

¹⁸See, for example, the hospital discharge guidance in England, Department of Health, *Ready to go?*, 2010, p8; Department of Communities and Local Government, *Homelessness code of guidance for local authorities*, 2006, para 5.14.

¹⁹Complaint no 07/C/05809 against Kirklees MBC, 26 June 2008. The ombudsman recommended a payment of £7,000 to the young man to reflect the unreasonable restriction on his day-to-day life, including his ability to have social contact, caused by its delay and also recommended further payments to the young man's parents.

²⁰Housing Act 1996 s175(3).

6.14 Local authorities are likely to assert that there is nothing else available, but families should be aware that the duty to provide suitable accommodation means that the individual circumstances must always be considered and the homelessness duties must be carried out having regard to the particular needs of the disabled child and his or her family.²¹ The Code of Guidance specifically provides that authorities must:

... consider carefully the suitability of accommodation for applicants whose household has particular medical and/or physical needs. The Secretary of State recommends that physical access to and around the home, space, bathroom and kitchen facilities, access to a garden and modifications to assist sensory loss as well as mobility need are all taken into account. These factors will be especially relevant where a member of the household is disabled.²²

6.15 If interim accommodation is being provided temporarily whilst enquiries into homelessness are ongoing then the right to suitable accommodation can be enforced by judicial review;²³ if the accommodation is provided following acceptance of a full housing duty²⁴ then there are statutory review and appeal rights.²⁵

6.16 The 2003 Suitability Order²⁶ provides that bed and breakfast accommodation for families with children (defined by reference to sharing bathroom and kitchen facilities) will only be suitable in an emergency and then only for a maximum of six weeks. The local government ombudsman has repeatedly criticised local authorities for extended use of bed and breakfast accommodation and recommends compensation based on the number of weeks in what is by definition unsuitable accommodation. However, because of the way that bed and breakfast accommodation is defined in the order, many authorities continue to provide shared accommodation but provide it themselves rather than through private providers; this escapes the automatic prohibition on bed and breakfast accommodation for families with children. Additionally, in many areas, hotel rooms have been adapted to provide basic cooking facilities within in bed sitting rooms with en-suite toilet and showers again avoiding the automatic prohibition on bed and breakfast accommodation. It is important to remember that local authority run hostels and rooms with en-suite facilities only escape automatic designation as unsuitable for families. Accommodation must

²¹See the approach of the Supreme Court to the needs of children and the suitability of accommodation in *Nzolameso v Westminster City Council* [2015] UKSC 22; (2015) 18 CCLR 201.

²²Department of Communities and Local Government, *Homelessness code of guidance for local authorities*, 2006, para 17.5.

²³Housing Act 1996 s188(1) read with s206.

²⁴Housing Act 1996 s193.

²⁵Housing Act 1996 ss202 and 204.

²⁶Homelessness (Suitability of Accommodation) (England) Order 2003 SI No 3326. See further *Department for Communities and Local Government, The Homelessness (Suitability of Accommodation) (England) Order 2003: guidance*, 2006.

nonetheless be suitable having regard to the particular needs of the family, including the needs of disabled children in the family.

6.17 It will be maladministration if a council's housing department receives a homelessness application from a family with clear social care needs and but fails to make an immediate referral to their social services colleagues.²⁷

Families with disabled children who need to move to suitable housing

6.18 Local authorities have specific duties to homeless families (see paras 6.12–6.17 above) and, in some cases, families with disabled children may be living in accommodation that is so unsuitable that there is no real alternative to a homelessness application. Some families will have no option but to request homelessness assistance for other reasons. However, for the majority of families living in accommodation which does not meet the needs of their disabled children, their desired outcome will be an offer of suitable social housing. As set out above, the only route to social housing is via a local authority's allocation scheme or housing register.²⁸

6.19 Any family seeking social housing needs to be on the local authority's housing register.²⁹ Local authorities are free to devise their own criteria for entry to the housing register and determining priorities between competing applicants³⁰ but in doing so must comply with the requirement to give some groups of applicants a 'reasonable preference'.³¹ The courts have held that qualification criteria which excludes those who are entitled to a reasonable preference are not lawful.³² Similarly, allocation schemes must comply with other relevant law, for

²⁷Complaint against Cardiff County Council Public Services Ombudsman for Wales, Case no 2009/00981, 15 March 2011.

²⁸Housing Act 1996 s159 includes, in the definition of an allocation of housing, a nomination by a local authority to a housing association, and so the other provisions of Part 6 Housing Act 1996 apply to these nominations as well as to the allocation of the authority's own housing.

²⁹Access to local authority housing registers is restricted in the same way as access to homelessness assistance and welfare benefits by reference to immigration status. Families with disabled children who are not British citizens habitually resident in the UK face myriad barriers to accessing suitable housing which are outside the scope of this chapter. Local authorities can additionally set local criteria determining who can join the housing register.

³⁰Housing Act 1996 s166A(11).

³¹Housing Act 1996 s166A(3)(a).

³²See *R (Jakimaviciute) v Hammersmith and Fulham LBC* [2014] EWCA Civ 1438; [2015] PTSR 822, which concerned the exclusion from the register of homeless people, but the same logic would apply to someone needing to move for welfare or medical reasons or to give or receive support.

example the prohibition of unlawful discrimination and the duty to make arrangements to safeguard and promote the welfare of children.³³

6.20 Practice about how an applicant joins the housing register varies. Many authorities do not place homeless applicants on the housing register until the homelessness assessment process is complete, but this approach is not lawful³⁴ and they should be asked to determine the housing register application at as early a stage as possible. Some authorities require written applications, some require face-to-face interviews whilst others require online applications.

6.21 Many local authorities now operate 'choice based lettings' schemes ('CBLs'). These schemes typically require applicants for housing to 'bid' for accommodation using online bidding schemes. Some schemes also allow for postal or telephone bids. In authorities using CBLs, applicants for housing and those advising them need to be familiar with the schemes and the ways of assessing prospects of bidding successfully. If bidding is required, then suitable accommodation will not be provided to an applicant who does not bid. Applicants for housing are entitled to information to enable them to understand whether or not accommodation appropriate to their needs is likely to become available for allocation to them, and if so, when.³⁵ This information may be easily available by understanding information published on CBLs' websites, or may be very difficult to obtain. But it is key to understanding what prospects a family has of obtaining the accommodation that they need.

6.22 Once the necessary information has been obtained, families and their advisers can start to understand what further steps may be needed to obtain suitable housing. The key to this may be understanding the local allocation scheme. This is perhaps best seen as a set of criteria which have to be addressed. Some schemes have provision for additional priority to be awarded on medical or welfare grounds. Sometimes, this is reserved to internal or external medical advisers; sometimes, children's services retain nomination rights or the power to place a family in a group or band with overriding priority for housing.

6.23 The starting point for considering how to assist a family with a disabled child in obtaining appropriate housing is likely to be establishing whether there is currently a live application to the housing register in the area in which the family wish to live. Some local authorities treat their existing tenants differently from prospective tenants, but they will still have a policy about how priority is determined for transferring tenants. Tenants of other social landlords (housing associations) should also approach their existing landlord. These tenants may

³³See for example *R (HA) v Ealing LBC* [2015] EWHC 2375 (Admin), where a policy which excluded applicants who could not meet a five-year residence requirement was found to be unlawful following the approach of the Court of Appeal in *Jakimaviciute*, but also because of unlawful discrimination against women and a failure to comply with CA 2004 s11. At the time of writing (November 2015), this judgment was the subject of an appeal by the local authority.

³⁴See for example *R (Silverstone) v Oxford City Council* [2003] EWHC 2434 (Admin). Local authorities should always be specifically asked to make a decision about an applicant's housing register application as well as the homelessness application at as an early a stage as possible

³⁵Housing Act 1996 s166A(9) (a) (ii).

effectively have access to two different pools of housing association properties, that is, those allocated by the local authority and those available for transferring existing tenants.³⁶

6.24 Once an application to the local authority for alternative housing has been made, advisers should ensure that it has been determined. What a determination of the application involves will differ from authority to authority. In many areas, applicants will receive a bidding number, details of their band, group or points level, and instructions on how to bid for properties. Other authorities retain schemes which involve only direct offers, and these schemes too may have points-based schemes or operate by sorting applicants into different groups or bands. It is important to understand how the scheme functions, including how and by whom decisions are made and how the scheme works in practice.

6.25 Having understood the workings of the scheme and obtained or attempted to obtain the section 166A(9)(b) information,³⁷ advisers should consider in detail the authority's allocation scheme, with a view to maximising the family's priority. It is important to look at the family's housing circumstances as a whole and to be realistic about what is likely to be available locally. Not uncommonly, a family will seek rehousing because of the needs of their disabled child but might obtain very high priority for rehousing for an unrelated reason. Other issues impacting on housing needs should not be overlooked because they may result in higher priority for rehousing. For example, local authorities typically give very high priority to those who are occupying a home that is too large, to those in blocks awaiting demolition or refurbishment, to those needing to move because of domestic violence or harassment.

6.26 When considering the detail of an allocation scheme, it is similarly important to understand whether an authority gives cumulative preference based on all of the reasons an applicant needs rehousing. For example a family that needs to move to ground floor accommodation because of a child's mobility problems may also be overcrowded or living in a home that is affected by serious disrepair: can additional priority be awarded under the scheme to reflect these other issues? Does the applicant have to choose which priority group is appropriate and, if so, how does the applicant make an informed choice? If the scheme awards medical priority which increases depending on how many family members have health issues which are relevant to housing, are there other family members whose less serious medical problems could easily be overlooked? It is almost always worth asking the authority to assess the impact of the housing situation on other family members. In some cases, carers will suffer from anxiety or depressive disorders which are being made worse by the difficulties of providing care in inappropriate housing situations; information to demonstrate this should be provided to the local authority.

³⁶Those who are existing tenants of housing associations may have additional rights as tenants seeking transfers; to assess these, see the relevant housing provider's own policies. As housing associations are public bodies (see *Donoghue v Poplar HARCA* [2001] EWCA Civ 595; [2002] QB 48), their decisions may be susceptible to judicial review

³⁷See para 6.21 above.

6.27 Many local authority schemes provide for priority for rehousing to be awarded on what they describe as welfare grounds distinct from medical grounds. Advisers, therefore, should consider whether families meet the criteria for medical priority, welfare priority, or both. It is always important when making representations about the need to move on medical grounds to provide as much information as possible about how a medical problem is either being made worse by the current housing, or means that a child's needs cannot be properly met in the current accommodation. It will not usually be sufficient simply to describe an illness or disability: linking the health or disability and its impact on the family to the housing conditions will be key to persuading an authority to award medical priority.

6.28 Most authorities have medical assessment forms which need to be completed by applicants seeking to move for medical reasons. Many specifically tell applicants that they need not provide supporting evidence. However, the provision of supporting evidence from professionals will usually be very important in persuading an authority to award additional priority, and in challenging a refusal to do so. The quality of the evidence is likely to be key and so those advocating for the family should be asked to give an opinion not only on the medical or disability issue itself but specifically on why rehousing is needed and what sort of accommodation would be suitable. Reports which describe a medical condition and conclude simply 'please rehouse this family' are likely to be given little weight by authorities.

6.29 Advisers should also make sure they understand insofar as possible what the process is for awarding medical or welfare priority. Many authorities carry out a paper-based exercise, with an internal or external medical adviser looking at the documents provided and providing an opinion. This opinion is not always routinely disclosed to the applicant and should always be requested and carefully considered. Many authorities delegate the decision about welfare priority to a panel and, in some authorities, panels also consider medical priority. It is important, therefore, to try to understand from the authority's allocation scheme not only who makes decisions but what criteria are applicable. Many schemes are silent about important issues like panel composition and guidance provided to the panels. Advisers should ask for relevant information including about decision-makers, panels, criteria and evidence before panels. If a decision is being made by a panel, an applicant may wish to attend to make oral representations. In every case, an understanding of the decision-making process can help applicants and their advisers when preparing and presenting evidence, and will be necessary if a local authority's decision about priority is going to be challenged.

6.30 Once an application has been assessed and the assessment understood, it may be necessary to consider how to challenge the way that the application has been prioritised. There is no statutory right to review a decision about housing

register priority.³⁸ Many schemes, however, will notify applicants of an internal right of review. This may or may not be effective depending on the nature of the decision being challenged. If there is no internal review right, or if that review right is not effective or a review has not been successful, decisions about priority, like other decisions by local authorities, may be susceptible to judicial review or may be dealt with using an authority's complaints procedure followed if necessary by a complaint to the local government ombudsman; see further chapter 11 on remedies.

6.31 Families need to understand not only how to obtain priority for rehousing and what that priority means, but also how an offer of accommodation may be made, what sort of accommodation will be offered and what the consequences of refusing an offer may be. The following questions may be useful:

- Is there a choice-based lettings scheme dependent on the applicant actively bidding?
- If there is a bidding scheme, how does an applicant bid and does the system allow the applicant to see their place in the queue during the bidding process? Can useful information be obtained from published results? Is there anyone who can assist with bidding, for example a local authority officer or someone in a local organisation familiar with the scheme?
- How many bids can be made? Are there penalties for not bidding? Are there penalties for refusing properties?
- Do the local authority reserve some lettings for direct allocation? Some families will prefer a direct offer, but others will want to choose where they live. Applicants need to understand when and how they may be made a direct offer and what the penalties for refusing one might be.
- Has the applicant assessed whether their ideas about property type and location are realistic? Conversely, has the applicant considered the consequences of bidding for or accepting a property that may not meet the disabled child's needs or the needs of other family members?
- Is there an agreement about what sort of accommodation is needed? In many areas, there is an acute shortage of ground floor accommodation with a garden. Many authorities have different rules for allocating these properties. These need to be understood. There may be cases where families are awarded what appears to be very high priority for rehousing but because there is no proper assessment of what alternative accommodation is needed, the family have no prospect of getting the sort of accommodation they need (for example because only those assessed as

³⁸Note that despite a common misconception to the contrary, legal aid is still available from legal aid providers holding housing contracts about housing register applications where there is also an issue about homelessness. This means that any legal aid housing provider should be able to advise on Part 6 of the Housing Act 1996 where either there is also a homelessness application or where it can be argued that the accommodation currently available is not accommodation it would be reasonable for the applicant to continue to occupy, ie there is an argument that the family are homeless as defined by Part 7 of the Housing Act 1996. Advice about a possible judicial review is also available under the legal aid scheme from any supplier holding a contract in public law.

needing a garden can be offered a property with a garden and no such assessment has been carried out).

6.32 In every case, therefore, where a family is not appropriately housed, the first steps should involve ensuring there is a current rehousing application; addressing the priority that application attracts under the local authority's allocation scheme (and the housing association landlord's scheme, if relevant); and gathering evidence and making representations about priority. At the same time, thought should be given to what sort of accommodation is needed (including issues about geographical location, height, access, internal layout, number of bedrooms, toilet and bathroom facilities), how to understand whether an offer is likely, how an offer will be made and whether the applicant is free to refuse it without penalties.

6.33 In some cases, these steps will be effective and suitable accommodation will be provided, particularly if the need for alternative accommodation has been set out clearly by relevant professionals. However, in many other cases, families will find that they have no real prospect of obtaining the sort of accommodation they need quickly enough. In these cases, it will usually be helpful to consider the relationship between the housing authority (or department in a unitary authority) and children's services. An assessment under CA 1989 s17 may be needed if the housing situation is adversely affecting a disabled child and if services are needed to address the housing situation. If an assessment does not deal effectively with the child's home environment then it can be challenged using the complaints procedure or by judicial review.³⁹

6.34 Often CA 1989 s17 assessments identify a need for alternative accommodation but simply recommend that a social worker should send a 'letter of support'. This is unlikely to be sufficient to facilitate rehousing, particularly in areas of the country with acute shortages of social housing. If a social worker has recognised the need for alternative accommodation it will be necessary to consider how the housing and children's services authorities work together and whether there are any local protocols or procedures allowing social workers to nominate families for additional priority for rehousing or for direct offers. See further chapter 2 at paras 2.52–2.55 on the duties to co-operate generally.

Benefit reform and disabled children

6.35 There are two recent changes to entitlement to welfare benefits which directly impact on housing for disabled children. When considering the need to move to suitable accommodation, it is necessary to ensure that the suitable accommodation is affordable. For families dependent on assistance from state benefits, the bedroom tax and the benefit cap may impact on their ability to pay the rent.⁴⁰

³⁹See further chapter 3 at paras 3.30–3.46 re assessments under the CA 1989 and chapter 11 on remedies generally.

⁴⁰For detailed coverage of the wide range of welfare benefits issues, see CPAG, *Welfare Benefits and Tax Credits Handbook*, 2015–16.

The bedroom tax

6.36 The social sector size criteria rules (commonly called the bedroom tax) restrict the amount of housing benefit that a family can receive by reference to family size.⁴¹ When these rules were first introduced, there was no exception for disabled children. However, the rules have now been amended so that an additional room is allowed for a 'child who cannot share a bedroom'. To avoid the reduction⁴² in housing benefit which would otherwise result, the child who cannot share a bedroom must be under 16,⁴³ entitled to the middle or highest rate of DLA care component and the local authority must be satisfied that, because of his/her disability, the child cannot reasonably share a bedroom with another child.⁴⁴ However, there are still some circumstances in which the bedroom tax does result in reductions to housing benefit because of a child's disability-related needs.⁴⁵

The benefit cap

6.37 The benefit cap⁴⁶ restricts the amount of income available from state benefits including housing benefit to £500 for families with children who are out of work.⁴⁷ Where a child is entitled to disability living allowance (DLA) or a personal independence payment (PIP), the benefit cap does not apply, and so many families with disabled children who are out of work will be exempt from the cap. But families should be aware that currently the exemption for families including a disabled child in receipt of PIP or DLA does not apply to adult children and this may mean that when a disabled child eligible for PIP or DLA becomes an adult, the exemption to the benefit cap is lost.⁴⁸ For very large families or families living in expensive accommodation, typically in the private rented sector or in temporary

⁴¹One bedroom is allowed for each couple; each other person over 16, two children of the same sex under 16; two children under 10.

⁴²14 per cent where there is 'underoccupation' by one bedroom, 25 per cent where the tenants is underoccupying by two or more bedrooms.

⁴³Children over 16 are treated as needing their own room.

⁴⁴Housing Benefit and Universal Credit (Size Criteria) (Miscellaneous Amendments) Regulations 2013 SI No 2828.

⁴⁵See *R (Rutherford) v Secretary of State for Work and Pensions* [2014] EWHC 1631 (Admin), where the bedroom tax applied to reduce housing benefit payable because an additional bedroom was needed for two carers providing respite and staying overnight twice weekly. A challenge to the regulations failed in the High Court but has been heard in the Court of Appeal. As at November 2015 judgment is awaited.

⁴⁶Benefit Cap (Housing Benefit) Regulations 2012 SI No 2994.

⁴⁷There is currently legislation going through parliament (the Welfare Reform and Work Bill 2015) which, if enacted, will further reduce the maximum amount of welfare benefits available.

⁴⁸But see *R (Hurley) v Secretary of State for Work and Pensions* [2015] EWHC 3382 (Admin), where the failure to exempt those caring for disabled adult family members was held to amount to unlawful indirect discrimination against disabled people.

accommodation following a homelessness application, there may be very high reductions in the amount of housing benefit that they can receive.

Discretionary housing payments and meeting the costs of moving

6.38 Families who cannot pay the rent for the accommodation that they need and are entitled to housing benefit can apply for additional assistance in the form of discretionary housing payments ('DHPs'). DHPs are administered by the local authority. Some authorities will not allow direct applications to the fund, requiring applicants to approach through approved partners. These will usually include local agencies providing services to families with disabled children and the authority's own social workers. Some authorities will allow direct applications. These can usually be found on local authorities' websites.

6.39 Families who succeed in obtaining an offer of suitable accommodation which meets the needs of their disabled children are often required to move very quickly. This can sometimes involve a move from furnished to unfurnished accommodation. Urgent help with the considerable expenses involved in moving may be required. Since the abolition of the social fund, this assistance may be available through localised welfare provision. Applications for assistance with moving including removal expenses and the purchase of essential items such as curtains, carpeting and white goods are usually made directly to the local authority. Information about each local authority's scheme can be easily accessed through the Child Poverty Action Group website.⁴⁹ There may well be additional costs arising from the child's disability, and children's services may also be asked to assist with these costs, if necessary through an assessment under CA 1989 s17, see paras 3.30–3.46.

6.40 Housing benefit is usually only payable on one home and this can cause difficulties where rent liability starts almost immediately on accepting a property but for whatever reason a family cannot move straight away. There may for example be delays whilst appropriate adaptations are made. In these circumstances, it may be possible to obtain housing benefit on two properties for a short period of time⁵⁰, and/or to ask children's services to assist to meet the shortfall, particularly where the move is as a result of a child's disability-related needs.

Disabled facilities grants

6.41 The primary route through which families with disabled children can get public support to meet the costs of adaptations to their homes is through a disabled facilities grant – known as a DFG.⁵¹ Housing authorities are responsible

⁴⁹www.cpag.org.uk/lwas.

⁵⁰See Housing Benefit Regulations 2006 SI No 213 reg 7(8).

⁵¹For a general briefing on the scheme see W Wilson, *Disabled Facilities Grants (England)*, SN/SP/3011, House of Commons Library, 2013.

for DFGs, although it is likely that a family will be referred to their housing authority by their social worker or other professional employed by health or children's services.⁵² The core funding for DFGs derives from the Better Care Fund.⁵³ Between 2011 and 2014, demand for DFGs increased by six per cent and during this period, funding for such grants fell by three per cent.⁵⁴

6.42 The purpose of DFGs is to 'modify disabling environments in order to restore or enable independent living, privacy, confidence and dignity for individuals and their families'.⁵⁵ Blatant failures to take action to ensure that a property is suitable for the needs of a disabled person may result in a violation of both the private and family life rights within European Convention on Human Rights (ECHR) article 8.⁵⁶ They may also be evidence that the award process for DFGs has not been subjected to a proper impact assessment under Equality Act 2010 s149 (see paras 9.97–9.115 below).⁵⁷

6.43 As discussed below, local authorities are under mandatory duty to pay DFGs where a person qualifies and to make the payment within a specified timescale. Despite these legal obligations, research suggests that a third of local authorities routinely breach the legal timescales affecting over 4,000 people every year.⁵⁸

Statutory scheme

6.44 DFGs are made under Part 1 of the Housing Grants, Construction and Regeneration Act (HGCRA) 1996. The duties and powers under the 1996 Act are expanded upon by regulations, principally the Housing Renewal Grants Regulations 1996, which are updated regularly.⁵⁹ Separate regulations are made

⁵²NHS bodies have extensive statutory powers to transfer funds to social services authorities (including children's services authorities) and these can be used to facilitate housing adaptations.

⁵³See Department of Health, *Better Care Fund: how it will work in 2015 to 2016. Policy Framework*, 2014, para 3.5 and, generally, Care & Repair, *Disabled Facilities Grant Funding via Better Care Funds – An Opportunity to Improve Outcomes*, 2015.

⁵⁴Leonard Cheshire, *The Long Wait For A Home*, 2015.

⁵⁵Department of Communities and Local Government/Department for Education/Department of Health, *Delivering housing adaptations for disabled people: a good practice guide*, 2006, para 1.6. The scheme covers mobile homes, houseboats and caravans as well as housing: see L Clements, *Community Care and the Law*, 6th edn, LAG, 2016.

⁵⁶*R (Bernard) v Enfield LBC* [2002] EWHC 2282 (Admin); (2002) 5 CCLR 577, and see also Local Government Ombudsman's Report on complaint no 07/A/11108 against Surrey County Council, 11 November 2008, paras 48–49.

⁵⁷See Local Government Ombudsman's *Digest of Cases 2008/09* Section F, Housing, p2.

⁵⁸Leonard Cheshire, *The Long Wait For A Home*, 2015.

⁵⁹The most recent updating regulations being the Housing Renewal Grants (Amendment) (England) Regulations 2014 SI No 1829.

to deal with the maximum amount of the grant⁶⁰ (currently set at £30,000 in England⁶¹) and for other related matters.

6.45 Detailed non-statutory practice guidance on the DFG scheme was issued in England in 2006⁶² and is referred to in the remainder of this chapter as 'the 2006 guidance'. 2013 guidance concerning best practice in relation to the award of DFGs has been published by the Home Adaptations Consortium whose membership comprises a broad spectrum of national non-governmental organisations – albeit that the guidance states that it is 'supported by' the Department of Health and the Department for Communities and Local Government.⁶³ Guidance concerning the process by which local authorities must formulate and consult on their DFG policies is provided in a 2003 circular issued by the (then) Office of the Deputy Prime Minister.⁶⁴

Definition of 'disabled'

6.46 For the purposes of the 1996 Act (s100), a person is disabled if he or she: (a) has sight, hearing or speech which is substantially impaired; (b) has a mental disorder or impairment of any kind; or (c) is physically substantially disabled by illness, injury, impairment present since birth, or otherwise. Section 100(3) explains that a person under the age of eighteen is to be considered to be disabled if, either they are in the authority's register of disabled children,⁶⁵ or if not, the authority is of the opinion that they are a disabled child for the purposes of CA 1989 Part III (see paras 3.13–3.15 above).

Grant-eligible works

6.47 Section 23 of the HGCRA 1996 sets out the purposes for which a grant must be approved, which can be summarised as follows:

- facilitating access to the home;
- making the home safe;
- facilitating access to a room used or usable as the principal family room;
- facilitating access to, or providing for, a room used or usable for sleeping;

⁶⁰Disabled Facilities Grants (Maximum Amounts and Additional Purposes) (England) Order 2008 SI No 1189.

⁶¹Disabled Facilities Grants (Maximum Amounts and Additional Purposes) (England) Order 2008 SI No 1189 art 2.

⁶²Department of Communities and Local Government/Department for Education/Department of Health, *Delivering housing adaptations for disabled people: a good practice guide*, 2006.

⁶³Home Adaptations Consortium, *Home Adaptations for Disabled People: a detailed guide to related legislation, guidance and good practice* ('2013 Homes Adaptations Consortium Guidance'), Care & Repair, 2013, para 1.15..

⁶⁴ODPM circular 05/2003, *Housing Renewal*, 2003, chapter 4 'Preparing A Policy'.

⁶⁵In other words, the register maintained under CA 1989 Sch 2 para 2 – see para 3.27 above.

- facilitating access to, or providing for, a lavatory, or facilitating the use of a lavatory;
- facilitating access to, or providing for, a bath or shower (or both), or facilitating the use of such;
- facilitating access to, or providing for, a room in which there is a washbasin, or facilitating the use of such;
- facilitating the preparation and cooking of food by the disabled occupant;
- improving any heating system in the home to meet the needs of the disabled occupant or, if there is no existing heating system there or any such system is unsuitable for use by the disabled occupant, providing a heating system suitable to meet his or her needs;
- facilitating the use of a source of power, light or heat by altering the position of one or more means of access to or control of that source or by providing additional means of control;
- facilitating access and movement by the disabled occupant around the home in order to enable him or her to care for a person who is normally resident there and is in need of such care; and
- such other purposes as may be specified by order of the secretary of state.

6.48 Since May 2008, local authorities are also required to fund works which facilitate a disabled occupant's access to and from a garden or works which make access to a garden safe for a disabled occupant.⁶⁶

6.49 Entitlement to a DFG arises following an assessment which identifies the need for one or more adaptations to be made (see below)⁶⁷ and the duty to make a DFG cannot be avoided by reason of a shortage of resources.⁶⁸ The main purposes for which grants must be made to families with disabled children are discussed further in paras 6.50–6.56 below.

Facilitating access

6.50 This heading includes works which are intended to remove or help overcome obstacles to the disabled child moving freely into or around the home and accessing the facilities and amenities within it.⁶⁹ These include family rooms, bedrooms and bathrooms.

Making the home safe

⁶⁶Disabled Facilities Grants (Maximum Amounts and Additional Purposes) (England) Order 2008 SI No 1189 art 3.

⁶⁷*R (Fay) v Essex CC* [2004] EWHC 879 (Admin) at [28]. The 2013 Homes Adaptations Consortium Guidance notes, however, that the 1996 Act 'makes no reference to assessment of need for an adaptation' (para 7.14).

⁶⁸*R v Birmingham CC ex p Taj Mohammed* (1998) 1 CCLR 441.

⁶⁹2006 guidance, Annex B, para 16.

6.51 Works under this heading may include adaptations to minimise the risk of danger posed by a disabled child's behavioural problems⁷⁰ as well as (for example) the installation of enhanced alarm systems for persons with hearing difficulties.⁷¹ Any grant made under this heading must reduce any identified risk as far as is reasonably practicable, if it is not possible to entirely eliminate the risk.⁷²

Room usable for sleeping

6.52 The building of a new room 'usable for sleeping' should only be grant-funded if the adaptation of an existing room is not a suitable option.⁷³ Grants can be made to expand the size of a shared bedroom used by a disabled child and (for example) a brother or sister.

Bathroom

6.53 The HGCRA 1996 separates out the provision of a lavatory and washing, bathing and showering facilities in order to emphasise that a grant must be available to ensure that a disabled child has access to each of these facilities and is able to use them.⁷⁴ Any failure to ensure that a disabled child can access each of these facilities with dignity may be unlawful and/or constitute maladministration.⁷⁵ On some occasions, an existing room may be capable of adaptation to provide such facilities – but the ombudsman considers it unreasonable for DFG grants officers to expect disabled persons and their families to give up a family room in order to make way for a ground floor shower/toilet.⁷⁶

Fixtures and fittings

6.54 One potential problem with the DFG scheme is the lack of clarity as to whether fixtures and fittings, including items such as specialist equipment, come within its terms. The 2006 guidance is silent on this point. However, the previous practice guidance suggested that equipment which requires structural modifications to a building should come within the DFG scheme, with smaller items (for example grab rails, lever taps, small scale ramps etc) remaining the responsibility of children's services departments under the CSDPA 1970 (see para 3.77 above). The 2006 guidance does, however, stress that where major items of equipment have been installed, arrangements for servicing and repairs should be made at the time of installation and the costs factored into the grant payable.⁷⁷

⁷⁰2006 guidance, Annex B, para 18.

⁷¹2006 guidance, Annex B, para 19.

⁷²**R (B) v Calderdale MBC** [2004] EWCA Civ 134; [2004] 1 WLR 2017 at [24].

⁷³2006 guidance, Annex B, para 21.

⁷⁴2006 guidance, Annex B, para 22.

⁷⁵See, for example, Complaint nos 02/C/8679, 02/C/8681 and 02/C/10389 against Bolsover DC, 30 September 2003.

⁷⁶Local Government Ombudsman Complaint no 05/C/13157 (Leeds City Council), 20 November 2007.

⁷⁷2006 guidance, para 8.1.

6.55 In this context, the 2013 Home Adaptations Consortium Guidance advises that in deciding if specialist equipment comes within the terms of the legislation, regard should be had to its primary purpose – ie facilitating access; making the dwelling/building safe; providing or improving heating systems and facilitating the preparation and cooking etc. Accordingly:

The provision of some equipment will clearly contribute to these purposes, commonly the use of stair lifts. Other equipment, particularly in the context of assistive technology and monitoring equipment may form part of a wider package of care contributed to by health and social care services.⁷⁸

6.56 The 2013 guidance further advises on the potential cost savings to local authorities of bulk buying/recycling the most frequent kinds of equipment such as stair lifts and level access showers.⁷⁹

Individual eligibility for DFGs

Main residence

6.57 DFGs will be available to make adaptations to the disabled person's only or main residence.⁸⁰ If the child's parents are separated, this may cause difficulties since the mandatory DFG remains only available for the 'main' residence.⁸¹ Adaptations to the home of the other parent may need to be carried out under CSDPA 1970 s2 if they are assessed as necessary:⁸² see para 3.77 above. The 2013 Homes Adaptations Guidance notes that, in addition, authorities 'can use their discretionary powers in considering multiple applications to adapt the homes of disabled children in these situations'.⁸³ The discretionary powers available to local authorities are considered at paras 6.73–6.75 below.

Tenure

6.58 A DFG is available for the disabled child's main residence regardless of tenure⁸⁴ (ie for owner-occupiers, tenants and licensees⁸⁵) and regardless of

⁷⁸2013 Homes Adaptations Consortium Guidance, paras 2.13–2.14.

⁷⁹2013 Homes Adaptations Consortium Guidance, para 9.23.

⁸⁰HGCRA 1996 ss21(2)(b) and 22(2)(b).

⁸¹Confirmed by the 2006 guidance, Annex B, para 50.

⁸²For a detailed analysis of this question, see Cardiff Law School, *Cerebra Legal Entitlements Research Project Opinion 'Rosi's Story'*, 2014.

⁸³Para 7.31: the guidance provides further detail on this issue at Annex C, para 58.

⁸⁴In the government's opinion DFGs are 'tenure neutral' see Wendy Wilson *Disabled Facilities Grants (England)* SN/SP/3011, House of Commons Library, 2013, p3.

⁸⁵See HGCRA 1996 s19(5) re licensees.

whether the child is living with his or her parents, foster-carers⁸⁶ or others. Where the applicant is a tenant, the consent of the landlord will be required. Authorities should seek to obtain this consent from private landlords and should offer to 'make good' the adaptations once the family leave the home in appropriate circumstances.⁸⁷ The 2006 guidance is clear that the nature of a person's housing tenure is irrelevant in relation to access to a DFG.⁸⁸ Any material difference in treatment of applicants who have different tenure (for instance, council tenants and private tenants) would constitute maladministration.⁸⁹

6.59 A problem with the DFG scheme which has been identified by the local government ombudsman is that it only applies to existing tenancies.⁹⁰ However, if a family with a disabled child propose to move house and, therefore, acquire a new tenancy, it would be unreasonable and maladministration for an authority not to expedite the works once the family have taken on the new tenancy.⁹¹

Occupancy requirements

6.60 DFGs are made subject to a requirement that the disabled person lives or intends to live in the accommodation as his or her only or main residence for the grant condition period.⁹² This period is currently five years from the date certified by the housing authority as the date on which the works are completed to its satisfaction.⁹³ The 2006 guidance states that any belief by the assessor that the applicant may not be able to live in the property for five years as a result of their deteriorating condition should not be a reason for withholding or delaying grant approval.⁹⁴ However, the guidance somewhat qualifies this otherwise clear statement in a later paragraph which suggests that if the disabled person's 'degeneration' may be 'short-term', this 'should be taken into account when considering the eligible works'.⁹⁵ This may be read as little more than a reminder that each applicant's individual circumstances need to be taken into account.

⁸⁶The 2013 Homes Adaptations Guidance notes (para 7.32) that in such a case provision may depend upon the type and length of placement.

⁸⁷2006 guidance, para 6.3.

⁸⁸2006 guidance, para 3.21.

⁸⁹See, for example, the ombudsman reports on complaint 99/B/00012 against North Warwickshire DC, 15 May 2000 and 30 November 2000.

⁹⁰HGCRA 1996 s24(2).

⁹¹See, for example, Complaint no 00/C/19154 against Birmingham CC, 19 March 2002.

⁹²Or for such shorter period as his health and other relevant circumstances permit: HGCRA 1996 ss21(2)(b) and 22(2)(b).

⁹³HGCRA 1996 s44(3)(a) and (b).

⁹⁴2006 guidance, para 6.7; see also para 5.22.

⁹⁵2006 guidance, Annex B, para 29.

Decisions on individual eligibility

6.61 The administration of the DFG scheme is the responsibility of the housing authority in whose area the relevant property is located. The housing authority is required to consult the relevant children's services authority (if it is not itself a children's services authority, as it will be in a unitary authority such as a London borough).⁹⁶ A housing authority may not approve a DFG application unless it is satisfied that:

- the relevant works are necessary and appropriate to meet the needs of a disabled child; and
- it is reasonable and practicable to carry out the relevant works, having regard to the age and condition of the home.⁹⁷

6.62 The decision as to whether requested works are 'necessary and appropriate' must be taken with reference to the views of the relevant children's services authority on the adaptation needs of disabled people.⁹⁸ Although under the CSDPA 1970 all assessed needs must be met once a child is deemed eligible (see para 3.56 above), an authority is entitled to consider a range of ways of meeting the need.⁹⁹ The Court of Appeal has stressed that the question of whether the works are of a type which come within the provisions of the scheme must be answered separately and prior to the question of whether the specific works requested are 'necessary and appropriate'.¹⁰⁰

6.63 A situation may arise where the housing authority would consider it to be more cost-effective to relocate a family with a disabled child, but accepts that, otherwise, the proposed adaptations were 'necessary and appropriate' and 'reasonable and practicable'. It is doubtful whether a refusal to award a DFG to fund adaptations for this reason alone would be lawful although much will depend upon the individual circumstances of the case – especially the practical reality of an alternative property being available. The 2006 guidance¹⁰¹ suggests that this option should be considered where major adaptations are required and it is difficult to provide a cost-effective solution in the existing home – but the 2013 Homes Consortium Guidance notes:

Experience in recent years has shown that some housing associations and local authority landlords are withholding their approval on the basis that the dwelling is "inappropriate" for adaptation, even when there is no physical

⁹⁶ HGCRA 1996 s24(3). It is, however, a matter for the housing authority whether it accepts the children's services authority's advice following consultation: 2006 guidance, Annex B, para 34.

⁹⁷ HGCRA 1996 s24(3). Guidance is given on the meaning of 'reasonable and practicable' in the 2006 guidance, Annex B, para 37.

⁹⁸ HGCRA 1996 s24.

⁹⁹ **R v Kirklees MBC ex p Daykin** (1997–98) 1 CCLR 512.

¹⁰⁰ **R (B) v Calderdale MBC** [2004] EWCA Civ 134; [2004] 1 WLR 2017.

¹⁰¹ 2006 guidance, para 6.15.

reason why the property cannot be adapted. Tenants have been asked to move to alternative property where the DFG applicant is judged by the landlord to be under-occupying the dwelling or where the landlord has decided they do not allow adaptations in certain types of property, i.e. level access showers in accommodation above ground floor level. In such circumstances landlords should be reminded that they 'may not unreasonably withhold their consent' to the adaptation being undertaken.¹⁰²

Maximum grant

6.64 The maximum mandatory grant awarded as a DFG is £30,000 in England.¹⁰³ Local authorities are empowered to make higher awards as discretionary grants: see paras 6.73–6.75 below.

6.65 If an adaptation is required to meet an assessed need and the cost of the works will exceed the maximum cap for a DFG, the remainder should be met either by the housing authority exercising its discretionary powers (see paras 6.73–6.75 below), the children's services authority meeting the additional costs (under CSDPA 1970 s2 – see para 3.72) or by a combination of the two. It will not be lawful for an authority to refuse to make adaptations which have been assessed as necessary solely by reason of cost.

6.66 Difficulties can arise in relation to the provision of advice and assistance with the design, layout and implementation of an adaptation. These costs do of course fall within the meaning of s2(6)(e) of the 1970 Act and it should be noted that section 2(3)(b) of the 1996 Act (and the associated regulations¹⁰⁴) makes clear that all ancillary costs ought be included in the grant. Additionally, local authorities have power to provide the technical assistance under Local Government and Housing Act 1989 s169.

Means testing

6.67 Applications for a DFG for a disabled person under the age of 19 are not subject to a means test.¹⁰⁵

Timescales and grant deferment

6.68 Housing authorities must approve or refuse a DFG application as soon as reasonably practicable and no later than six months after the date of

¹⁰² 2013 Homes Consortium Guidance, para 7.67.

¹⁰³ Disabled Facilities Grants (Maximum Amounts and Additional Purposes) (England) Order 2008 SI No 1189 art 2.

¹⁰⁴ See also Housing Renewal Grants (Services and Charges) Order 1996 SI No 2889 art 2.

¹⁰⁵ For details of the means test that applies to people over 19 see L Clements, *Community Care and the Law*, 6th edn, LAG, 2016.

application.¹⁰⁶ The actual payment of the DFG, if approved, may be delayed until a date not more than 12 months following the date of the application.¹⁰⁷ If any hardship is caused by delay even within these timescales, the children's services authority should be pressed to carry out the works under their parallel duties under the CSDPA 1970: see para 3.77.

6.69 Despite these clear statutory provisions, housing authorities routinely adopt a range of extra-statutory procedures to delay the processing of DFG applications. For instance, authorities have been criticised for creating inappropriate administrative hurdles prior to applications being received¹⁰⁸ and for delaying preliminary assessments, citing a shortage of assessors.¹⁰⁹ The 2006 guidance is unhelpfully not as strong in calling for authorities to expedite grant applications as its predecessors.¹¹⁰

6.70 The 2006 guidance accepts that some DFG applications will be prioritised ahead of others by housing authorities. Although particular priority should be given to those with deteriorating conditions,¹¹¹ authorities are also reminded to take a broader approach reflecting the social model of disability, which would consider wider risks to independence.¹¹² It would of course be unlawful for an authority to operate a blanket policy which discriminated against applications made by families with disabled children in comparison to those made by disabled adults, or to adopt any similar policy which penalised one group of disabled people in relation to any other as a matter of course. The Local Government Ombudsman has found maladministration where a local authority failed to provide clear information to applicants concerning the way its priority system for the processing of DFG applications operated.¹¹³

¹⁰⁶ HGCRA 1996 s34. Any delay beyond six months from the referral by children's services to the execution of the works will generally be considered unjustified and will constitute maladministration: Complaint no 02/C/08679 against Bolsover DC, 30 September 2003.

¹⁰⁷ HGCRA 1996 s36.

¹⁰⁸ Complaint no 02/C/04897 against Morpeth BC and Northumberland CC, 27 November 2003.

¹⁰⁹ Complaint no 90/C/0336, 9 October 1991: delay of nine months for an occupational therapist assessment constituted maladministration. As noted above, the 2013 Homes Adaptations Consortium Guidance notes, at para 7.14, that the 1996 Act 'makes no reference to assessment of need for an adaptation' and it refers to advice from the Department for Communities and Local Government 'that an occupational therapy [(OT)] assessment is not a legislative requirement' and that OT assessments should 'not be used in every case'. See also *R (Fay) v Essex CC* [2004] EWHC 879 (Admin) at [28].

¹¹⁰ See Clements, 2015, for references to the predecessor guidance documents.

¹¹¹ 2006 guidance, para 4.8.

¹¹² 2006 guidance, para 5.21. See L Clements and P Thompson, *Community Care and the Law*, 5th edn, LAG, 2011, paras 15.88-15.93 for further discussion of DFG prioritisation processes.

¹¹³ Complaints no 97/B/0524, 0827-8, 1146 and 1760 against Bristol CC 1998.

6.71 The 2006 guidance provides a table which illustrates a 'possible approach' to target times for each stage of a DFG.¹¹⁴ The indicative targets for the total process amount to 83 working days for high priority applications, 151 working days for medium priority applications and 259 working days for low priority applications.

6.72 Authorities also have a duty to make interim arrangements to ameliorate any hardship experienced by a disabled child between the assessment of the need for adaptations to their home and the completion of the works. The 2006 guidance states forcefully that it is 'not acceptable' for disabled people to be left for weeks or months without interim help.¹¹⁵ Furthermore, children's services and housing authorities should consider meeting some or all of the costs occasioned if a family needs to make other arrangements while work is being carried out, and should consider moving the family to temporary accommodation when major works are required.¹¹⁶ The 2013 Home Adaptations Consortium guidance advises that 'response should be as fast as possible and consideration given to expedited procedures and interim solutions where some measure of delay is inevitable'.¹¹⁷

Discretionary grants

6.73 Housing authorities in both England and Wales have a wide discretionary power to give assistance in any form for adaptations and other housing purposes.¹¹⁸ There is no financial limit on the amount of assistance that can be given. Specific guidance on the exercise of this discretion was given by the government in England in 2003.¹¹⁹ The 2006 guidance suggests that the types of assistance that can be provided under this power will include:

- funding for small-scale adaptations not covered by mandatory DFGs, or to bypass the lengthy DFG timescales for minor works;
- top-up funding to supplement a mandatory DFG where the necessary works will cost more than the maximum DFG cap; and
- help to buy a new property where the authority considers that this will benefit the disabled child at least as much as improving or adapting the existing accommodation.¹²⁰

¹¹⁴ 2006 guidance, para 9.3. The table is reproduced in L Clements, *Community Care and the Law*, 6th edn, LAG, 2016.

¹¹⁵ 2006 guidance, para 5.40.

¹¹⁶ 2006 guidance, paras 5.43-5.44.

¹¹⁷ 2013 Homes Consortium Guidance, para 7.33.

¹¹⁸ Article 3 of the Regulatory Reform (Housing Assistance) (England and Wales) Order 2002 SI No 1860.

¹¹⁹ Office of the Deputy Prime Minister, *Housing renewal*, Circular 05/2003, 2003.

¹²⁰ 2006 guidance, para 2.24.

6.74 Discretionary support offered by an authority can be in any form, for instance as a loan or an outright grant. Any discretionary loan made to an individual family will not affect their entitlement to a mandatory DFG.¹²¹

6.75 As with all discretionary powers, housing authorities must exercise their power to fund additional adaptations rationally and reasonably and must ensure like cases are treated alike. It would be unlawful for an authority to operate a blanket policy of refusing to make any discretionary payments to fund adaptations; each individual case must be considered on its merits.

NHS-funded adaptations

6.76 The NHS has power to fund adaptations and brief guidance concerning the use of this power is provided in the 2012 National Framework for NHS Continuing Healthcare (see para 10.67 below).¹²² This includes encouragement that partner bodies 'work together locally on integrated adaptations services' and that 'CCGs should consider having clear arrangements with partners setting out how the adaptation needs of those entitled to NHS continuing healthcare should be met, including referral processes and funding responsibilities'.¹²³ The framework draws attention to the possibility of such adaptations being provided through the use of a DFG although if this is not possible, then the NHS will be responsible for the necessary support. As it notes, where individuals:

require bespoke equipment (and/or specialist or other non-bespoke equipment that is not available through joint equipment services) to meet specific assessed needs identified in their NHS continuing healthcare care plan. CCGs should make appropriate arrangements to meet these needs.¹²⁴

6.77 Similarly, the National Framework for Children and Young People's Continuing Care (see paras 5.87–5.100 above) requires consideration of whether any adaptations to the child's home are required as part of the completion of the Decision Support Tool to assist with determining eligibility for NHS continuing care.¹²⁵

¹²¹ 2006 guidance, para 6.22.

¹²² Department of Health, **National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care November 2012 (Revised)**, DH 2012, – see PG Guidance (Part 2) and in particular PG 79 and 85–89. Although this framework applies to adults, the guidance on the principles is relevant to children.

¹²³ 2012 National Framework for NHS Continuing Healthcare, para PG 79.3. This guidance was cited with approval in **R (Whapples) v Birmingham Cross-city Clinical Commissioning Group** [2015] EWCA Civ 435 para 32.

¹²⁴ 2012 National Framework for NHS Continuing Healthcare, para PG 79.2.

¹²⁵ Department of Health, **National Framework for Children and Young People's Continuing Care**, 2010, p41. At the time of writing (November 2015), the Department of Health is consulting on a revised National Framework, see para 5.94 above.