

# 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.
- 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. However, a homelessness application may not be an available or appropriate route to suitable social housing. Whether or not a homelessness application is likely to result in a move to appropriate accommodation will depend on both the particular circumstances of the family and local housing policies and procedures.
- 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 any 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. Since 1 April 2018, an explicit duty to assess housing needs is also imposed on any housing authority dealing with a homelessness application.
- 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. Their input will often also be required to address the detail of what sort of accommodation is needed, because the questions 1) ‘do you need to move / why do you need to move / how urgent is your need to move?’ and 2) ‘when you move, what sort of new home do you need?’ are often two very distinct questions.

- 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 1989 noted that ‘when houses are well adapted for a particular child, the family’s life can be transformed’.<sup>1</sup> Yet as has been noted in chapter 1 (para 1.37 above), many families with disabled children currently live in housing which

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

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 in any detail all of the duties owed to children and families under the Housing Act (HA) 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.<sup>2</sup> 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 6.57–6.88 below).<sup>3</sup> 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 housing shortage. The provision of accommodation under the

2 See, for example, D Astin, *Housing law handbook*, 4th edn, LAG, 2018; and A Arden QC, J Bates and T Vanhegan, *Homelessness and allocations*, 11th edn, LAG, 2018.

3 This material draws heavily from L Clements, *Community care and the law*, 7th edn, LAG, 2019.

Children Act 1989 to homeless children (section 20) is dealt with in chapter 3, see para 3.136.<sup>4</sup>

## 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 s3<sup>5</sup> to have specific regard to the needs of disabled people, including disabled children. This duty is exemplified in practice guidance issued in England in 2006<sup>6</sup> 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 social 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’.<sup>7</sup> The term ‘social housing’ is used to describe council housing and housing provided by housing associations.<sup>8</sup> 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 any

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 Children Act 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 HA 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.

assessment of their social care needs<sup>9</sup> 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 National Health Service (NHS) where appropriate) to co-operate to ensure that the housing needs of disabled children are met. The joint working duty is reinforced by statute – primarily Children Act 2004 s10 (see para 2.52 above) and HA 1996 s213. In relation to this general obligation, 1992 guidance<sup>10</sup> 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.<sup>11</sup> The 2018 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.<sup>12</sup> Examples of collaborative working are listed at para 5.6 of the Code and include joint protocols for referral of clients between agencies.<sup>13</sup>

- 6.9 The Homelessness Reduction Act 2017 introduced a new section 213B to the HA 1996 which obliges specified public authorities (in England only) to notify a housing authority of service users they consider may be homeless or threatened with homelessness within

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].

10 Department 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.

11 Homelessness Act 2002 s3.

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

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

56 days.<sup>14</sup> This could include service users who can no longer reasonably be expected to continue to reside in their current accommodation, for example because accommodation is very unsafe or unsuitable because of a child's disability.

6.10 The local government ombudsman (LGO – now the Local Government and Social Care Ombudsman (LGSCO)) 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.<sup>15</sup>

6.11 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), the local housing authority's duty to provide accommodation both pending enquiries<sup>16</sup> and following acceptance of what is often referred to as a full housing duty<sup>17</sup> is a duty to provide suitable accommodation.<sup>18</sup>

6.12 Duties to co-operate with housing authorities also extend to health bodies: as we note above (see para 5.22), 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 long-standing duty has been stressed in many policy documents,<sup>19</sup> 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

14 Homelessness (Review Procedure etc.) Regulations 2018 specifies that the authorities are: (a) prisons; (b) youth offender institutions; (c) secure training centres; (d) secure colleges; (e) youth offending teams; (f) probation services (including community rehabilitation companies); (g) Jobcentre Plus; (h) social service authorities; (i) emergency departments; (j) urgent treatment centres; and (k) hospitals in their function of providing inpatient care.

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

16 HA 1996 s188 – but note that access to homelessness services is dependent on immigration status.

17 HA 1996 s193.

18 HA 1996 s206; see also the Homelessness (Suitability of Accommodation) (England) Orders 2003 (SI No 3326) and 2012 (SI No 2601) and the Code of Guidance (note 12 above) in particular at para 17.5.

19 See, 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.

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.<sup>20</sup>

## Families with disabled children becoming 'homeless'

6.13 Duties owed by local authorities to families with disabled children under Part VII of the HA 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'.<sup>21</sup> 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 HA 1996 is required.<sup>22</sup>

6.14 Homeless families which include disabled children face particular difficulties. For many years it was common practice for local authorities to refuse to take any action at all (including the provision of temporary accommodation until the day of an eviction and will refuse to carry out an assessment about what sort of accommodation is required in advance of the day of eviction. The changes introduced by the Homelessness Reduction Act 2017 now require action at an earlier stage, and prescribe a housing needs assessment at the outset of a homelessness application.

20 Complaint 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.

21 HA 1996 s175(3).

22 As explained below, in April 2018 significant changes to the obligations owed by local authorities to homeless households and those threatened with homelessness. As a consequence most local authorities have significantly changed what happens at the beginning of a homelessness application. The consequences of these changes, which simultaneously provide opportunities for better practice and significant risks for homeless households who may be deprived of the sort of assistance they could previously expect, are briefly summarised below.

- 6.15 Local housing authorities therefore have a clear set of obligations when they have reason to believe that an applicant may be homeless or threatened with homelessness within 56 days<sup>23</sup>. While an applicant is threatened with homelessness (or if the applicant is already homeless) the local authority must produce a personalised housing plan.<sup>24</sup> The personalised housing plan must be preceded and informed by a housing needs assessment. The new requirement for a housing needs assessment provides an opportunity for the provision of information about how the needs of disabled children impact on housing needs. The more information provided to a local authority at this stage the better. It is important to ensure that information focuses not only on the nature and severity of any disability but on the way that that disability relates to housing needs. Evidence which simply describes a medical condition or disability without explicitly setting out the housing implications is unlikely to assist.
- 6.16 Local authorities should therefore be alert when producing housing needs assessments and the plans informed by them of the particular vulnerabilities and needs of disabled children, which may not only dictate the sort of accommodation needed in terms of location and amenities but also tenure (the terms of any tenancy and the identity of the landlord). In some cases, including cases where there are very entrenched or hard to meet housing needs, the sort of actions which may be appropriate for other applicants may require modification. For example, for some families, negotiating the private rented sector may be impossible because of the need for adaptations, a longer tenure than is available in the private sector, or because of the need to stay in an area which would otherwise be unaffordable, because of support available only in that geographical area. Such information should be noted in the housing needs assessment and inform the personal housing plan.
- 6.17 The housing plan must detail: why the applicant became homeless or threatened with homelessness; the housing needs of the applicant; what would constitute suitable accommodation for them; and what support is necessary to have suitable accommodation (and to retain it). The new obligation to complete personalised housing plans presents a good opportunity for appropriate input from professionals (who know the applicant and understand the family's needs) to work with the local authority at an early stage.

23 This is one of the changes introduced in April 2018: previously the obligations only arose when threatened with homelessness within 28 days.

24 HA 1996 s189A; and see chapter 11 of the homelessness code of guidance for local authorities.

6.18 Anecdotal evidence suggests that since the introduction of the requirements for needs assessments and personalised housing plans local authorities are failing to carry out thorough housing needs assessments distinct from the personal housing plans, and that housing plans are often produced from a standard template with little or no attempt to tailor the template so that it actually reflects the applicants' needs. Such poor practice can be challenged by judicial review (the statutory review rights in respect of personalised housing plans being limited and not including a right to request a review of the needs assessment).<sup>25</sup>

6.19 The homelessness code of guidance includes useful content relevant to homeless families with disabled children:

11.10 When assessing the *housing needs* of an applicant housing authorities will need to consider the individual members of the household, and all relevant needs. This should include an assessment of the size and type of accommodation required, any requirements to meet the needs of a person who is disabled or has specific medical needs, and the location of housing that is required. The applicant's wishes and preferences should also be considered and recorded within the assessment; whether or not the housing authority believes there is a reasonable prospect of accommodation being available that will meet those wishes and preferences.

11.11 An assessment of the applicant's and household member's *support needs* should be holistic and comprehensive, and not limited to those needs which are most apparent or have been notified to the housing authority by a referral agency. Housing authorities will wish to adopt assessment tools that enable staff to tease out particular aspects of need, without appearing to take a 'checklist' approach using a list of possible needs. Some applicants may be reluctant to disclose their needs and will need sensitive encouragement to do so, with an assurance that the purpose of the assessment is to identify how the housing authority can best assist them to prevent or relieve homelessness.

11.12 Some applicants will identify care and support needs that cannot be met by the housing authority; or which require health or social care services to be provided alongside help to secure

25 Review rights are contained in HA 1996 s202, and s202(1) relevantly includes a right to request a review of:

- (ba) any decision of a local housing authority—
  - (i) as to the steps they are to take under subsection (2) of section 189B, or
  - (ii) to give notice under subsection (5) of that section bringing to an end their duty to the applicant under subsection (2) of that section,
- (bb) any decision of a local housing authority to give notice to the applicant under section 193B(2) (notice given to those who deliberately and unreasonably refuse to cooperate).

accommodation. Housing authorities should be mindful of duties under the *Care Act 2014* including those relating to assessment and adult safeguarding; and the use of Care Act powers to meet urgent care and support needs where an assessment has not been completed.

6.20 Despite the statutory requirement that all accommodation provided under HA 1996 Part VII should be suitable, all too often the quality, location and type of accommodation provided (both as temporary accommodation and as longer term accommodation) does not properly meet the needs of applicants.

6.21 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. It is important therefore that a housing needs assessment should identify whether or not shared accommodation could be suitable, as well as identifying other needs including location or design requirements.

6.22 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.<sup>26</sup> The explicit requirement at an early stage for a housing needs assessment makes this clear, and the personalised housing plan (which must have regard to the needs assessment) is potentially a very useful tool for setting parameters about what sort of accommodation is required. The personalised housing plan must include an assessment of:

- (a) the circumstances that caused the applicant to become homeless or threatened with homelessness,
- (b) the housing needs of the applicant including, in particular, what accommodation would be suitable for the applicant and

26 See 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.

- any persons with whom the applicant resides or might reasonably be expected to reside (“other relevant persons”), and
- (c) what support would be necessary for the applicant and any other relevant persons to be able to have and retain suitable accommodation.<sup>27</sup>

6.23 In addition, the Code of Guidance specifically provides that authorities:

. . . will need to consider carefully the suitability of accommodation for households with particular medical and/or physical needs. Physical access to and around the home, space, bathroom and kitchen facilities, access to a garden and modifications to assist people with sensory loss as well as mobility needs are all factors which might need to be taken into account . . .<sup>28</sup>

6.24 Generally, where possible, housing authorities should try to secure accommodation that is as close as possible to where an applicant was previously living. Securing accommodation for an applicant in a different location can cause difficulties for some applicants. Where possible the authority should seek to retain established links with schools, doctors, social workers and other key services and support.

6.25 If interim accommodation is being provided while enquiries into homelessness are ongoing then the right to suitable accommodation can be enforced by judicial review;<sup>29</sup> if the accommodation is provided following acceptance of a full housing duty<sup>30</sup> then there are statutory review and appeal rights.<sup>31</sup>

6.26 The 2003 Suitability Order<sup>32</sup> 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 LGSCO has repeatedly criticised local authorities for extended use of bed and breakfast accommodation and recommends compensation based on the

27 HA 1996 s189(2).

28 The Homelessness Code of Guidance is published online and updated: [www.gov.uk/guidance/homelessness-code-of-guidance-for-local-authorities/chapter-17-suitability-of-accommodation](http://www.gov.uk/guidance/homelessness-code-of-guidance-for-local-authorities/chapter-17-suitability-of-accommodation).

29 HA 1996 s188(1) read with s206.

30 HA 1996 s193.

31 HA 1996 ss202 and 204.

32 Homelessness (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*.

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

6.27 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.<sup>33</sup>

6.28 The amendment of the HA 1996 to provide for housing needs assessments, personalised housing plans and new obligations to 'prevent' and 'relieve' homelessness has resulted in a statute which can be unwieldy and difficult to negotiate. The once clear pathway from an interim duty to accommodate in suitable accommodation with no statutory review and appeal rights to a longer term obligation to accommodate with review and appeal rights has been replaced with a regime which is far more difficult for applicants and their advisers to understand and navigate. It is therefore particularly important to take care that review rights are appropriately identified and used. In addition, once a 'relief' duty is identified, a local authority can now discharge that duty by arranging a six-month tenancy in the private sector. Detailed consideration of the various pitfalls (for applicants, their advisers and for local authorities) is outside the scope of this book but great care should be taken to identify which sections of the Act apply and whether or not there are any relevant review rights. Refusal of offers of accommodation, or a failure to take steps identified as appropriate by a local authority, can result in eviction from any temporary accommodation and no (or very limited) further assistance from the local authority. Detailed representations

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

with evidence from professionals about a family's needs at as early a stage as possible is even more important than ever.

## Families with disabled children who need to move to suitable housing

- 6.29 Local authorities have specific duties to homeless families (see para 6.13 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.<sup>34</sup>
- 6.30 Any family seeking social housing needs to be on the local authority's housing register.<sup>35</sup> Local authorities are free to devise their own criteria for entry to the housing register and determining priorities between competing applicants<sup>36</sup> but in doing so must comply with the requirement to give some groups of applicants a '*reasonable preference*'.<sup>37</sup> The courts have held that qualification criteria which excludes those who are entitled to a reasonable preference are not lawful.<sup>38</sup> Similarly, allocation schemes must comply with other relevant law, for example the prohibition of unlawful discrimination and

34 HA 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 HA 1996 Part 6 apply to these nominations as well as to the allocation of the authority's own housing.

35 Access 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.

36 HA 1996 s166A(11).

37 HA 1996 s166A(3)(a).

38 See *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.

the duty to make arrangements to safeguard and promote the welfare of children.<sup>39</sup>

- 6.31 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 unlikely to be lawful<sup>40</sup> and authorities 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 while others require online applications.
- 6.32 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.<sup>41</sup> 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.
- 6.33 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

39 See, 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 the Children Act 2004 s11.

40 See, for example, *R (Bilverstone) 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.

41 HA 1996 s166A(9)(a)(ii).

the power to place a family in a group or band with overriding priority for housing.

- 6.34 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 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.<sup>42</sup>
- 6.35 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.
- 6.36 Having understood the workings of the scheme and obtained or attempted to obtain the section 166A(9)(b) information,<sup>43</sup> 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

42 Those 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.

43 See para 6.32 above.

refurbishment, to those needing to move because of domestic violence or harassment.

6.37 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. In such cases they will need to know if additional priority be awarded under the scheme to reflect these other issues or if they have to choose which priority group is appropriate and, if so, how to decide which option is best. If the scheme awards medical priority which increases depending on how many family members have housing related health issues it will be important to identify 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.

6.38 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 of a child's disability related needs that 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.

6.39 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.

6.40 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.

6.41 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.<sup>44</sup> 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

44 Note that despite a common misconception, 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 HA 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 HA 1996 Part 7. Advice about a possible judicial review is also available under the legal aid scheme from any supplier holding a contract in public law.

procedure, followed if necessary by a complaint to the LGSCO; see further chapter 11 on remedies.

6.42 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 CBL 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?
- Does 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 may have no prospect of getting the sort of accommodation they need (for example because only those assessed as needing a garden can be offered a property with a garden and no such assessment has been carried out).

6.43 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.

6.44 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 Children Act 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.<sup>45</sup>

6.45 Often Children Act 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.

6.46 Where social workers take the view that alternative accommodation is needed, they should be reminded of the provisions of section 27 of the Children Act 1989 which mandates compliance with a request for assistance made by a children's services authority absent a statutory excuse:

27. Co-operation between authorities.

45 See further chapter 3 at para 3.30 re assessments under the Children Act 1989; and chapter 11 on remedies generally.

- (1) Where it appears to a local authority that any authority [. . .] mentioned in subsection (3) could, by taking any specified action, help in the exercise of any of their functions under this Part, they may request the help of that other authority [. . .], specifying the action in question.
- (2) An authority whose help is so requested shall comply with the request if it is compatible with their own statutory or other duties and obligations and does not unduly prejudice the discharge of any of their functions

6.47 The operation of section 27 is straightforward in situations where either a family lives in a non-unitary authority, or lives in one authority and needs rehousing in another. However, the substance of the provisions also has utility in unitary authorities. In *R (M) and R(A) v Islington LBC*,<sup>46</sup> the High Court held that while does not apply to two departments within the same authority, ‘within a unitary authority different departments must act in the same way as would be required if section 27 did apply’.

6.48 Two cases have usefully considered the way that housing and children’s services departments in unitary authorities should approach the housing needs of disabled children. These cases illustrate possible approaches to litigation where the position of the local housing authority appears to be intractable despite cogent evidence about the needs of disabled children for safe housing.

6.49 *R (J and L) v Hillingdon LBC*<sup>47</sup> concerned the identified need of a family including a disabled child for safe accommodation. There was a risk of a serious accident to the child in the current accommodation. The High Court found that the local authority had failed to take an integrated approach to the assessment of the housing needs and risks of a disabled child living in unsuitable private rented accommodation, and that such an approach was required. The housing department had failed to take into account the recommendations of a child and family assessment carried out by social services, and had failed to actively promote the welfare of a child in need as required by Children Act 2004 s11 (see para 2.53 above). The section 11 duty applied to the local authority as a whole, and not just to the social services department. Following the successful judicial review, the family were eventually rehoused.

6.50 In *R (K) v Haringey LBC*<sup>48</sup> the children’s services department had asked the housing department to assist with rehousing, specifically

46 [2016] EWHC 332 (Admin), (2016) 19 CCLR 122.

47 (2018) 21 CCLR 144.

48 (2018) 21 CCLR 487.

referring to section 27 of the Children Act 1989 (despite being a unitary authority) The court found Haringey 'housing acted unlawfully by failing to comply with the section 27 request and by failing to create a plan or to take steps to meet the claimants' unaddressed needs and by failing to comply with the obligations of section 11 of the Children Act 2004.

## Benefit reform and disabled children

- 6.51 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.<sup>49</sup>

## Discretionary housing payments and meeting the costs of moving

- 6.52 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.
- 6.53 Some authorities will not allow direct applications to the fund, requiring applicants to approach through approved partners.
- 6.54 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.
- 6.55 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. Following the abolition of the social fund, this assistance was made available through localised welfare provision. However, a large number of local authorities have discontinued localised welfare provision, meaning that the only avenue for assistance with moving

49 For further information on the bedroom tax and benefit cap, see chapter 12 .

including removal expenses and the purchase of essential items such as curtains, carpeting and white goods may be a request to children's services to assist with these costs, if necessary through an assessment under Children Act 1989 s17, see para 3.30 above.

- 6.56 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 while appropriate adaptations are made. In these circumstances, it may be possible to obtain housing benefit on two properties for a short period of time,<sup>50</sup> 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

### Introduction

- 6.57 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.<sup>51</sup> Housing authorities are responsible 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.<sup>52</sup> The core funding for DFGs derives from the Better Care Fund.<sup>53</sup> Between 2014 and 2020 core funding more than doubled.<sup>54</sup>
- 6.58 The purpose of DFGs is to 'modify disabling environments in order to restore or enable independent living, privacy, confidence

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

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

52 NHS 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.

53 See 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.

54 L. Clements and S. McCormack *Disabled Children and the Cost Effectiveness of Home Adaptations* (Cerebra 2017).

and dignity for individuals and their families'.<sup>55</sup> 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.<sup>56</sup> 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 para 9.99 below).<sup>57</sup>

- 6.59 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.<sup>58</sup>

### Statutory scheme

- 6.60 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.<sup>59</sup> Separate regulations are made to deal with the maximum amount of the grant<sup>60</sup> (currently set at £30,000 in England<sup>61</sup>) and for other related matters.
- 6.61 Detailed non-statutory practice guidance on the DFG scheme was issued in England in 2006<sup>62</sup> and is referred to in the remainder

55 Department 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*, 7th edn, LAG, 2019.

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.

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

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

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

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

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

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

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 (DOH – now the Department of Health and Social Care (DHSC)) and the Department for Communities and Local Government (DCLG – now the Ministry of Housing, Communities and Local Government (MHCLG)).<sup>63</sup> 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.<sup>64</sup>

## Definition of ‘disabled’

- 6.62 For the purposes of the HGCRA 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,<sup>65</sup> or if not, the authority is of the opinion that they are a disabled child for the purposes of Children Act 1989 Part III (see para 3.13 above).

## Grant-eligible works

### *Overview*

- 6.63 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;

63 Home 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.

64 Office of the Deputy Prime Minister (ODPM) circular 05/2003, *Housing Renewal*, 2003, chapter 4 ‘Preparing A Policy’.

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

- facilitating access to, or providing for, a room used or usable for sleeping;
- 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.

6.64 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.<sup>66</sup>

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

66 Disabled 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* (1997–98) 1 CCLR 441.

### *Facilitating access*

- 6.66 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.<sup>69</sup> These include family rooms, bedrooms and bathrooms.

### *Making the home safe*

- 6.67 Works under this heading may include adaptations to minimise the risk of danger posed by a disabled child's behavioural problems<sup>70</sup> as well as (for example) the installation of enhanced alarm systems for persons with hearing difficulties.<sup>71</sup> 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.<sup>72</sup>

### *Room usable for sleeping*

- 6.68 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.<sup>73</sup> 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*

- 6.69 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.<sup>74</sup> Any failure to ensure that a disabled child can access each of these facilities with dignity may be unlawful and/or constitute maladministration.<sup>75</sup> 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

69 2006 guidance, Annex B, para 16.

70 2006 guidance, Annex B, para 18.

71 2006 guidance, Annex B, para 19.

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

73 2006 guidance, Annex B, para 21.

74 2006 guidance, Annex B, para 22.

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

give up a family room in order to make way for a ground floor shower/toilet.<sup>76</sup>

### *Fixtures and fittings*

- 6.70 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.<sup>77</sup>
- 6.71 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.<sup>78</sup>
- 6.72 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.<sup>79</sup>

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

77 2006 guidance, para 8.1.

78 2013 Homes Adaptations Consortium Guidance, paras 2.13–2.14.

79 2013 Homes Adaptations Consortium Guidance, para 9.23.

## Individual eligibility for DFGs

### *Main residence*

- 6.73 DFGs will be available to make adaptations to the disabled person's only or main residence.<sup>80</sup> If the child's parents are separated, this may cause difficulties since the mandatory DFG remains only available for the 'main' residence.<sup>81</sup> Adaptations to the home of the other parent may need to be carried out under CSDPA 1970 s2 if they are assessed as necessary:<sup>82</sup> 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'.<sup>83</sup> The discretionary powers available to local authorities are considered at para 6.89 below.

### *Tenure*

- 6.74 A DFG is available for the disabled child's main residence regardless of tenure<sup>84</sup> (ie for owner-occupiers, tenants and licensees<sup>85</sup>) and regardless of whether the child is living with his or her parents, foster-carers<sup>86</sup> 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.<sup>87</sup> The 2006 guidance is clear that the nature of a person's housing tenure is irrelevant in relation to access to a DFG.<sup>88</sup> Any material difference in treatment of applicants who have different

80 HGCRA 1996 ss21(2)(b) and 22(2)(b).

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

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

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

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

85 See HGCRA 1996 s19(5) re licensees.

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

87 2006 guidance, para 6.3.

88 2006 guidance, para 3.21.

tenure (for instance, council tenants and private tenants) would constitute maladministration.<sup>89</sup>

- 6.75 A problem with the DFG scheme which has been identified by the LGO is that it only applies to existing tenancies.<sup>90</sup> 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.<sup>91</sup>

### *Occupancy requirements*

- 6.76 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.<sup>92</sup> 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.<sup>93</sup> 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.<sup>94</sup> 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'.<sup>95</sup> This may be read as little more than a reminder that each applicant's individual circumstances need to be taken into account.

### Decisions on individual eligibility

- 6.77 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

89 See, for example, the ombudsman reports on complaint no 99/B/00012 against North Warwickshire DC, 15 May 2000 and 30 November 2000.

90 HGCRA 1996 s24(2).

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

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

93 HGCRA 1996 s44(3)(a) and (b).

94 2006 guidance, para 6.7.

95 2006 guidance, Annex B, para 29.

will be in a unitary authority such as a London borough).<sup>96</sup> 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.<sup>97</sup>

6.78 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.<sup>98</sup> 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.<sup>99</sup> 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’.<sup>100</sup>

6.79 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 guidance<sup>101</sup> 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 reason why the property cannot be adapted.

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.

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.<sup>102</sup>

## Maximum grant

- 6.80 The maximum mandatory grant awarded as a DFG is £30,000 in England.<sup>103</sup> Local authorities are empowered to make higher awards as discretionary grants: see para 6.89 below.
- 6.81 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 para 6.89 below), the children’s services authority meeting the additional costs (under CSDPA 1970 s2 – see para 3.77) 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.
- 6.82 The cost of advice and assistance with the design, layout and implementation of an adaptation fall within the meaning of CSDPA 1970 s2(6)(e) and it should be noted that HA 1996 s2(3)(b) (and the associated regulations<sup>104</sup>) makes clear that all ancillary costs ought to 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

- 6.83 Applications for a DFG for a disabled person under the age of 19 are not subject to a means test.<sup>105</sup>

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, and see also L. Clements ‘Disabled Facilities Grants and Social Care responsibilities’ at [www.lukeclements.co.uk/disabled-facilities-grants-dfgs-and-social-care-responsibilities](http://www.lukeclements.co.uk/disabled-facilities-grants-dfgs-and-social-care-responsibilities).

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*, 7th edn, LAG, 2019.

## Timescales and grant deferment

6.84 Housing authorities must approve or refuse a DFG application as soon as reasonably practicable and no later than six months after the date of application.<sup>106</sup> 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.<sup>107</sup> 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.

6.85 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 received<sup>108</sup> and for delaying preliminary assessments, citing a shortage of assessors.<sup>109</sup> The 2006 guidance is unhelpfully not as strong in calling for authorities to expedite grant applications as its predecessors.<sup>110</sup>

6.86 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,<sup>111</sup> authorities are also reminded to take a broader approach reflecting the social model of disability, which would consider wider risks to independence.<sup>112</sup> It would of course be unlawful for an authority to operate a blanket policy which discriminated against applications

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, *Community care and the law*, 7th edn, LAG, 2019, chapter 15.

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 LGO 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.<sup>113</sup>

6.87 The 2006 guidance provides a table which illustrates a ‘possible approach’ to target times for each stage of a DFG.<sup>114</sup> 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.

6.88 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.<sup>115</sup> 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.<sup>116</sup> 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’.<sup>117</sup>

## Discretionary grants

6.89 Housing authorities in both England and Wales have a wide discretionary power to give assistance in any form for adaptations and other housing purposes.<sup>118</sup> 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.<sup>119</sup>

113 Complaint nos 97/B/0524, 0827–8, 1146 and 1760 against Bristol CC 1998.

114 2006 guidance, para 9.3. The table is reproduced in L Clements, *Community care and the law*, 7th edn, LAG, 2019, p645.

115 2006 guidance, para 5.40.

116 2006 guidance, paras 5.43–5.44.

117 2013 Homes Consortium Guidance, para 7.33.

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

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

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.<sup>120</sup>

6.90 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.<sup>121</sup>

6.91 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*

6.92 The NHS has power to fund adaptations and brief guidance concerning the use of this power is provided in the 2018 National Framework for NHS Continuing Healthcare (see para 10.73 below).<sup>122</sup> This includes encouragement that partner bodies ‘work together locally on integrated adaptations services’ and that clinical commissioning groups (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’.<sup>123</sup> 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

120 2006 guidance, para 2.24, and see also footnote 110 above.

121 2006 guidance, para 6.22.

122 Department of Health, *National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care 2018 (Revised)* see in particular PG 56.

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; (2015) 18 CCLR 300 para 32.

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.<sup>124</sup>

- 6.93 Similarly, the National Framework for Children and Young People's Continuing Care (see para 5.93 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.<sup>125</sup>

124 2018 National Framework for NHS Continuing Healthcare, para 301(c).

125 Department of Health, *National Framework for Children and Young People's Continuing Care*, 2016, p28. See para 5.93 above.

