

STATUTORY ASSESSMENT.

Water that has been begged for does not quench the thirst. (Old African proverb)

The very word "assessment" is inextricably linked to situations where, in terms of children and their development, parents and/or professionals have concerns. *Assessment* is, so to speak, 'bread and butter' to many who work in the fields of education or child-care, yet to carers, the very idea can provide anxiety, even antagonism. Why would solicitors have any kind of role in an already complicated arena such as this?

When considering children whose development is impaired, the principal organisation having a duty in law to conduct an assessment is that of Children's Services. Found within this relatively new creature of statute are the former 'child care' element of the social services department, and also the local education authority. However, old habits regarding assessment appear to be dying hard, and for many families, the prospect remains that numerous, and sometimes diverse assessments of need, in the form of a 'Core Assessment', a 'Special Educational Needs Assessment', a 'Common Assessment' and/or a 'Carers' Assessment' are requested randomly and apparently in isolation one with another.

All of that said, there are, alternatively, situations where parents and carers are seemingly desperate that an assessment be carried out, but the authority refuses that request even though it has little knowledge or understanding of a child's overall difficulties.

In short, this is a process ripe for disaster. Whilst acknowledging the success stories, what happens when things go wrong? Experience suggests that many parents and carers are unaware of the legal rights which accompany the assessment process, whether from an initial refusal to conduct one, to formal appeal once services have been planned as a result of assessment. Set out below are some of the key principles.

1. generally speaking, any 'statutory decision', that is one made by a public body such as a school or a local authority, can be appealed in some way.
2. further, a refusal by a public body to permit an appeal could result in a dispute very much bigger than that which would have arisen had an appeal taken place
3. appeals often follow fairly strict pre-existing guidelines, whose features include timescales and rules about how disagreements about the evidence will be dealt with.
4. a 'statutory body' (see (1) above) must make decisions in accordance with principles of fairness, reasonableness and in proportion to the situation under consideration.

So much for the theory. What is the relevance of a framework of law to this issue of 'statutory assessment'? Why might legal advice be of assistance in situations where a

child with a disability and/or special educational needs comes into contact with the assessment process?

Many readers of this magazine will be familiar with the Special Educational Needs and Disability Tribunal which is, for some parents and carers, the 'ultimate' arbiter of what should happen in the education of a child living in Englandⁱ. Appeals to that particular body arise in certain prescribed circumstances, including those where the local education authority is refusing to conduct a statutory assessment or, where having done so, they refuse to issue a Statement of Special Educational Needs. The Tribunal registers over 3,000 appeals each year. In practice, whilst there is a very wide range of issues brought to the Tribunal, the essence of any appeal – irrespective of what the needs of the child are seen to be – is found in questions of whether the LEA has been fair, accurate, and professional in its approach to and delivery of 'statutory assessment'.

The legal expectations upon Children's Services Department now include the improvement to the well-being of children in terms not only of their physical and mental health and emotional well-being but also education, training and recreationⁱⁱ. Accurate, fair, and most importantly holistic contributions to assessment of a child's situation seem, quite rightly, to be key factors in achieving these laudable objectives. If you have reason to believe that they have been compromised in a situation with which you are familiar, consider seeking specialist legal advice; it could change your child's life!

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ⁱ There is an equivalent appeal Tribunal for Wales, as also, in rather different form, in Scotland.

ⁱⁱ As found at s10 of the 2004 Children Act.