

## EDUCATION, PUBLIC LAW AND THE INDIVIDUAL

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### Assessment, assessment...

Forgive, momentarily at least, my cynicism, but precisely *what* are we trying to achieve by the latest swathes of guidance and accompanying documentation relating to the assessment of children? I refer in general terms to the tidal wave of information posted on the 'Every Child Matters' web-site<sup>1</sup> to, specifically, the "Common Assessment Framework" (CAF), a new tool in the increasingly large box of assessment options currently available to front line education and social care professionals.

'Why', one might ask, 'are we pretending to understand and, by implication, resource the needs of children who, with the best will in the world, are on the margins when categorised in terms of their overall needs or difficulties, as witnessed in terms of (say) fixed term exclusion from school, or candidacy for the imposition of an Anti-Social Behaviour Order?'

The CAF is a practical manifestation of the thinking behind ss 10 and 11 of the 2004 Children Act, and derives from statutory guidance *Every Child Matters: Change for Children*<sup>2</sup> The importance of the Act in public policy terms is not under challenge in this argument since no-one with at least a modicum of interest in education and public law matters could possibly dissent from the principle that 'every child *does* matter'. Further, as s10 of the Act states...

*(2) The arrangements (to promote cooperation between the authority and each of the authority's relevant partners) are to be made with a view to improving the well-being of children in the authority's area so far as relating to -*

- (a) physical and mental health and emotional well-being;*
- (b) protection from harm and neglect;*
- (c) education, training and recreation;*
- (d) the contribution made by them to society;*
- (e) social and economic well-being*

For those practitioners in the extremely wide field of education, it would be foolish indeed to rail against such arrangements. You would be forgiven for thinking that the brave new world had indeed arrived if, at face value, you could see evidence of the wholesale adoption of such principles.

As both a legal and a social work practitioner, it is well within my experience to suggest that the reality for many children is different from the expectation. It simply cannot be that the issues that I encounter every working day are significantly at odds with the experiences of others. Presuming this to be true, the proposition to be examined is whether, far from the CAF releasing, in accordance with its utilitarian ideals, new

tranches of funding designed primarily as a genuinely positive preventative policy initiative, it is a smokescreen for 'action' when in reality statutory agencies remain hard-pressed, cash-strapped, resource-driven and crisis-orientated.

So where is the evidence? The first thing to say is that, if you operate at the front line of education or social welfare services, you would be entitled to say that, in general terms, securing resources for those children in the greatest need is by no means a 'gimme'. Anyone engaged in challenging education authority decisions affecting children with special educational needs knows from their practice that the threshold for statutory assessments and the issue of Statements of Special Educational Needs continues to be pushed higher. Ignore, for a moment, the devolution of budgets to schools argument. There is, in my experience, hard-nosed, even if anecdotal, evidence that additional resources to schools who receive children with evidenced special needs will be denied until a Statement has been issued in Final form. Such practices encourage, for all the wrong reasons, early exclusions or exclusions which, irrespective of how they are posited, are unlawful by virtue of their 'informality'<sup>3</sup>. To avoid ambiguity, note that Guidance expresses it thus...*Informal or unofficial exclusions are illegal regardless of whether they are done with the agreement of parents or carers* (emphasis in original).

It is not, of course, solely in the field of Special Educational Needs that the impact of failed priorities can be witnessed. The "Getting It: Getting it Right" report of 2006 states that...*every year 1000 Black pupils are permanently excluded and nearly 30,000 receive a fixed period exclusion. Black pupils are three times more likely to be excluded than their White peers, after all other background factors are taken into account.* (Department for Education and Skills (DfES) Priority Review: Exclusion of Black Pupils "Getting it. Getting it right" (September 2006)). It has been suggested recently that the overall exclusion rates in large secondary schools currently is running at a rate of 1 in 10.

None of the above provides the evidence upon which a professional hunch can be translated into an irrefutable statistic. Neither does what follows, but in my view the issue I seek to describe is – or at least should be - a matter of grave concern to all those whose practice brings them full-square into the territory of public policy. To understand the concern, you need first to be aware that, in the delivery of adult community care services, local authorities must, consequent on the "Fair Access to Care Services" (FACS) Guidance<sup>4</sup>, determine funding priorities to individuals within Eligibility Criteria, the basic framework for which is set out within that Guidance. The four pre-determined bands of eligibility are, unsurprisingly, 'critical', 'substantial' 'moderate' and 'low'.

So far, so good. The problem to arise is that, increasingly, local authorities are devising similar criteria for the determination and delivery of services to children, and indeed are relying upon 'criteria of eligibility' when determining whether children, especially those whose needs have been assessed as being located somewhere between 'moderate' and 'substantial' bands. Most local authorities in my professional experience simply rule out – as a policy directive – the directing of resources to children whose eligible needs are assessed as 'moderate' or 'low'.

Of course, if one accepts at face value the good intentions of resource-allocators seeking to equalise and rationalise the distribution of resources, then eligibility criteria can only (one may conclude) a long overdue and positive development. However, before the case

becomes completely compelling, practitioners may need to be reminded, if only in terms of general examples, that:

- ~ under s17 of the 1989 Children Act, an assessment must be conducted of any child in need, and irrespective of whether there is an initial indication of the likely need for services<sup>5</sup> *and*
- ~ services may be provided under s17 to another person if it can be shown that the child in need will ultimately benefit from that provision

Guidance to the Children Act, found at Volume 6 para 3.3 expressly points out that...*these provisions encourage Social Services Departments to provide day and domiciliary services, guidance and counselling, respite care and a range of other services as a means of supporting children in need.*

The SSD may make such arrangements as they see fit for any person to provide services, and support may include giving assistance in kind, or in exceptional circumstances in cash. However, in accordance with Guidance, where it is the SSD's view that a child's welfare is adequately provided for and no unmet need exists, it is expressly indicated that they "need not act". To bring this up to date in practice terms, Guidance is typically being re-interpreted as..."if a child's needs do not fall into the highest bands of eligibility, then no service will be provided".

So where is the holy grail in terms of rhetoric matching reality? How does the "Common Assessment Framework" mean anything to the practitioner whose clients have already been assessed as needy, but for whom there is no reasonable prospect of service provision due to the bite of eligibility criteria?

In 'LH'<sup>6</sup> Silber J referred to the fact that...*guidance issued after the 2004 Act included the promotion of a common assessment framework which had to be introduced by all authorities by April 2006, after preparation prior to that. That framework is designed to promote consistency and inter-agency co-operation and to avoid the invasiveness of multiple assessments.* Undoubtedly, this is indeed the merit of the CAF, but the practice is, in this writer's experience, significantly wide of the mark. Disabled children in particular have long been better assessed than resourced. Latterly, there has become clear that there is every possibility that they will be more poorly assessed than before, whether under the CAF or the Core Assessment Guidelines, and still be poorly resourced. Is it not time to wake up to the fact that the CAF might just, irrespective of best intentions, be another 'spin' on just how well the needs of children are, or are not, effectively being addressed?

**[end]**

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<sup>1</sup> <http://www.everychildmatters.gov.uk/>

<sup>2</sup> Department of Health, London, 2004: DfES/1090/2004

<sup>3</sup> [www.teachernet.gov.uk/wholeschool/behaviour/exclusion/guidance/part2/](http://www.teachernet.gov.uk/wholeschool/behaviour/exclusion/guidance/part2/)

<sup>4</sup> DoH: Fair access to care services: Guidance on eligibility criteria for adult social care (2003)

<sup>5</sup> See R(G) –v- Barnet LBC and others [2003] UKHL 57

