

# **Making change happen in the provision of short breaks**

## **Aiming High for Disabled Children and the Short Breaks Regulations in England**

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# The Case for Action

- Parliamentary Hearings on Services for Disabled Children – October 2006
  - Cross-party group of Members of Parliament
- Supported by disabled children's charities
- Findings
  - Overwhelming evidence of the positive impact of short breaks for families
  - Lack of access to short breaks as single biggest cause of unhappiness with service provision

# Every Disabled Child Matters

- Campaign launched by the charities who supported the Parliamentary Hearings
- Online campaigning via individual supporters and organisations
- National and local actions
- Three priorities
  - New rights
  - New resources
  - A new priority for disabled children

# New 'Rights'

Started with a 'Private Members' Bill' in 2006

Let to Children and Young Persons Act 2008:

- Inserted new duty into Children Act 1989
- Requirement to 'assist individuals who provide care for such children to continue to do so, or to do so more effectively, by giving them breaks from caring'
  - See para 6(1)(c) of schedule 2 to the Children Act 1989 (as amended)

# New 'Rights'

## Breaks for Carers of Disabled Children Regulations 2011

- Reg 3 – regard to needs of carers in crisis and those requiring sustainable short breaks
- Reg 4 – duty to ‘provide, so far as is reasonably practicable, a range of services which is sufficient...’
- Reg 5 – duty to publish short breaks services statement (inc eligibility criteria)

# Existing Rights

- Right to an assessment
  - Section 17 of the Children Act 1989
- Right to services where necessary to meet the child's needs
  - Section 2 of the Chronically Sick and Disabled Persons Act 1970
- Role of new duties primarily to improve and inform commissioning
  - No new individual rights created

# New Resources

## Aiming High For Disabled Children

- Programme of investment sponsored by HM Treasury
- £280m revenue funding between 2008-11 to transform short breaks
- Intention – to provide an additional 40,000 fortnightly short breaks
- Additional capital funding and NHS monies

# New Resources - Impact

- Significant progress, but unevenly spread
- Most important achievement for families – move away from crisis model to provision of wider range of preventative short breaks
- Key development – self referral models leading to ‘unassessed’ short breaks with simple eligibility criteria
  - Frequently provided by voluntary sector



# But...

## ‘Short Breaks in 2015: An Uncertain Future’ (EDCM research)

- Non-ringfenced funding from 2011 onwards
- Some local areas started cutting provision even before the end of the ringfence
- Huge variation in spending across local areas between 2011/12 and 2015/16
  - Average spending cut for bottom quartile – 26%
  - Average increase for top quartile – also 26%

# Can 'rights' help protect resources?

*R (DAT and BNM) v West Berkshire Council*  
[2016] EWHC 1876 (Admin)

- West Berkshire faced with unprecedented funding pressures in 2016/17
- Decided to cut funding to voluntary sector providers of short breaks by 52%
- Claim for judicial review brought by two disabled children acting through their mothers, funded by legal aid.

# Can 'rights' help protect resources?

*R (DAT and BNM) v West Berkshire Council*  
[2016] EWHC 1876 (Admin)

- Court held that decision to cut funding was unlawful as a result of failure to consider the relevant legal duties, including Regs 3 and 4 of the 2011 Regulations
- Decision quashed
  - West Berkshire will reconsider funding allocation in September 2016

# Looking Forward

- Further budget cuts anticipated in 2017/18
  - Councils will at least need to show proper consideration of the legal framework
- Real concern over implementation of new SEN and disability framework in Children and Families Act 2014
  - Short breaks limited to children with new 'Education, Health and Care Plans'...
- No change anticipated to legal framework around short breaks

# Conclusions

1. Achieving a new priority for short breaks requires both funding and legislation
2. Legal minimums particularly important in tough times
3. Value of short breaks to families as an essential service now being recognised
4. Success of EDCM campaign shows what can be achieved by children, young people and families working together

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