



Know your rights  
Use your rights  
Live your rights!



**An information Resource  
for Disabled People  
and Disabled People's  
Organisations**



**Disability Wales is the national association of disabled people's organisations striving to achieve the rights and equality of all disabled people.**

Please note that the Know your Rights, Use your Rights, Live your Rights! information resource is not legal advice. If you need advice, please see the useful contacts section for sources of information and advice. As a policy and influencing organisation, Disability Wales is unable to provide legal advice to individuals. The information in this information resource is correct and the links provided are active at the time of completion in January 2021. The law may have changed since it was released, so information in it may be incorrect or out of date.

Disability Wales  
Brydon House, Block B  
Caerphilly Business Park  
Van Road  
Caerphilly  
CF83 3ED

**Telephone:** 02920 887 325  
(Please use announcer for Minicom)

**Email:** [info@disabilitywales.org](mailto:info@disabilitywales.org)

[www.disabilitywales.org](http://www.disabilitywales.org)

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# Introduction

This booklet was first published in 2013 as part of Disability Wales' 2012-2015 core work programme. This latest version includes information about legislation introduced since 2013 including the Social Services and Wellbeing (Wales) Act 2014.

During 2020 Disability Wales surveyed Disabled People in Wales. The results show that 68% of the 120 respondents did not feel that their rights were being adequately enforced, and 35% did not feel their rights were being enforced at all. Worryingly, 76% of respondents were not confident that their rights would improve over the next five years and 43% of these people didn't think that their rights would improve at all.

This aim of this resource is to equip members with knowledge and information about disabled people's rights and how they can use them to promote equality and eliminate discrimination and harassment in their communities. A further aim is to support and empower disabled people at a particularly challenging time, given the impact of the Covid-19 pandemic on the lives and livelihoods of so many.

The revision of this resource is a key element of DW's response to the pandemic and in support of the recovery and a more inclusive future. As well as providing information about legislation, it outlines several case studies whereby disabled people and their organisations have successfully argued their rights under the Equality Act (2010), the Public Sector Equality Duties and the UN Convention on the Rights of Disabled People. The outcome of this has been to influence the planning and delivery of national or local policies or to challenge decisions which threatened to undermine disabled people's equality and right to independent living.

DW recognises how vital it is that disabled people understand our intrinsic human rights and value ourselves for who we are.

Strengthening disabled people's perception about ourselves is an important means of challenging belief systems that we are powerless especially in the face of institutionalised discrimination and individualised harassment.

Our hope therefore is that this resource will act as a source of inspiration and affirmation of what

can be achieved when disabled people act together, fully equipped with the tools for change.

When Disability Wales wrote this pack, it decided to concentrate on the rights of Disabled People under various equality laws. These laws are very important and help to make sure that Disabled People can argue for their rights. However, in many legal cases about the rights of Disabled People, other laws are used too. These laws are explained elsewhere and are not covered in detail in this pack. They include:

- **The Human Rights Act (1998).** This Act received Royal Assent on 9 November 1998, and mostly came into force in the UK on 2 October 2000. The purpose of the Human Rights Act is to bring most of the rights contained in the European Convention on Human Rights into UK law. The Human Rights Act does this by placing a duty on all public authorities in the UK to act in a way that respects and fits with the rights in the European Convention. If public authorities fail to respect your rights, you can bring a case against them in the UK courts without having to go to the European Court of Human Rights.
- **The National Assistance Act (1948).** This was the first piece of law in the UK to make local councils responsible for ensuring that Disabled People get some support. The Act looks mainly at how local authorities should work out what individual Disabled People require and which services a local authority should set up or pay for to support Disabled People. The National Assistance Act is important because it laid the basis for later Community Care Laws.
- **The NHS and Community Care Act (1990).** This changed the way that local authorities have to assess the requirements of Disabled People. The responsibilities of local authorities were widened and rules were set for how assessments of need are supposed to be carried out. All needs assessments by Social Services and Community Care service provision have to be delivered in line with this Act: these include Direct Payments; Personal and Individual Budgets; day care support; respite and residential services. Other laws since the NHS and Community Care Act have set rules for how Social Services are delivered. These include the Community Care (Direct Payments) Act (1996) 'and if passed the

Social Services and Well-being (Wales) Bill currently being discussed by the Welsh Government.’ All of these are important pieces of law which explain Disabled People’s rights to support.

- **Mental Capacity Act (2005).** This is a law which is designed to support Disabled People whose impairments mean that they may lack capacity, to make sure that they have rights to make choices and decisions about how and where to live.

You can find links to websites containing more information about all of these laws under the [Further Sources of Information section \(page 121\)](#)

## Acknowledgements

Disability Wales would also like to thank a wide range of organisations and individuals who contributed to the resource by highlighting their experiences and providing insight, advice, and helping to shape this updated version of *‘Know Your Rights, Use Your Rights, Live Your Rights!’*







# 1 The Equality Act

## 1.1 The Equality Act 2010 (EA) – The Basics

### 1.1.1 What is it?

The Equality Act replaces previous Acts that tackled discrimination and aims to bring them together and simplify the law. It covers different types of discrimination, such as:

- Direct discrimination
- Indirect discrimination
- Discrimination arising from a disability
- Discrimination by perception
- Discrimination by association
- Harassment
- Third-party harassment
- Victimisation
- Failure to make 'reasonable adjustments'

### 1.1.2 Who does it affect?

There are nine characteristics protected by the EA:

1. Disability
2. Sex
3. Race
4. Age

5. Religion or belief
6. Sexual orientation
7. Gender reassignment
8. Marriage and civil partnership
9. Pregnancy and maternity

### 1.1.3 What does it mean for Disabled People?

Under the EA, providers of goods or services must make reasonable adjustments for Disabled People because Disabled People often have different requirements. When they don't do this, they are breaking the law.

Any form of harassment or victimisation by any person or organisation is also unlawful. For example, treating a Disabled Person worse than others because they have an impairment or because they've made a complaint.

Disabled People can take individuals, organisations or public bodies to court if they have been victim of any type of discrimination covered by the EA.

## 1.2 The Equality Act 2010 (EA) – Know Your Rights

1.2.1 [Section 1.3](#) of the pack is about the Equality Act 2010 (EA). It looks in particular at the parts of the Act which can be used by disabled individuals who want to know more about their rights.

### 1.2.2 Background to the Equality Act

1.2.3 The EA came into force in October 2010. It replaced other equality laws including the Disability Discrimination Act (DDA) 1995. Some important decisions made by the courts under the DDA can still be used today when making Equality Act claims. The EA strengthened parts of the DDA, which was found to be ineffective when tested in real-life court cases.

1.2.4 The EA covers all employers. This means that any Disabled Person who works for someone else has the right not to be discriminated against while at work under the EA.

1.2.5 The EA covers all providers of goods, facilities and services. The EA also protects Disabled Students from discrimination: this includes any kind of education such as a nursery, school, college, university or other adult education service. This section of the pack looks mainly at Disabled People's rights under the EA if they are discriminated against by anyone providing goods, facilities or services.

1.2.6 Section 165 of the Equality Act 2010 makes it illegal for taxi drivers to discriminate against wheelchair users. It was commenced in April 2017 but only takes effect in areas in which the taxi licensing authority has created a "designated list" of accessible vehicles under Section 167 of the Act. The Department for Transport's statutory guidance recommended authorities construct a list, and that authorities should be able to produce these lists by 6th October 2017.<sup>1</sup>

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1 Quoted from Doug Paulley's guidance document: Licencing authorities' approach to the Equality Act 2010 provisions on taxi wheelchair discrimination. Found here: <https://www.kingqueen.org.uk/s167/> (accessed 14<sup>th</sup> December 2020)

### 1.2.7 Definitions

You are disabled under the Equality Act 2010 if you have a physical or mental impairment that has a ‘substantial’ and ‘long-term’ negative effect on your ability to do normal daily activities.

‘Substantial’ is more than minor or trivial. For example, it takes much longer than it usually would to complete a daily task like getting dressed.

‘Long-term’ means 12 months or more. For example, a breathing condition that develops as a result of a lung infection.<sup>2</sup>

You can find more information about what needs to be taken into account when determining if a person meets the EA criteria for disability in this government guidance document:  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/570382/Equality\\_Act\\_2010-disability\\_definition.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/570382/Equality_Act_2010-disability_definition.pdf)

### 1.2.8 Prohibited Conduct – Unlawful Discrimination

1.2.9 Under the Equality Act a number of new terms were introduced, such as ‘prohibited conduct’. This is a general heading under which all forms of unlawful discrimination fall.

1.2.10 The full list of prohibited conduct in the EA includes:

- Direct discrimination
- Indirect discrimination
- Discrimination arising from disability
- Discrimination by perception
- Discrimination by association
- Disability discrimination: duty to make reasonable adjustments and failure to comply with that duty
- Harassment
- Third-party harassment
- Victimisation
- Gender reassignment discrimination: work absence
- Pregnancy & maternity discrimination

<sup>2</sup> Quoted from UK Government website section on definitions of disability under the Equality Act 2010 (EA): <https://www.gov.uk/definition-of-disability-under-equality-act-2010> (accessed 15th December 2020)

1.2.11 Below, each of the terms relating to disability discrimination is explained.

1.2.12 Another new term introduced by the EA is 'protected characteristics'. This term defines the different groups of people who are protected from unfair discrimination by the Act. If someone has one or more of these characteristics the Act covers them.

1.2.13 The list of characteristics protected by the EA are:

- Disability
- Sex
- Race
- Age
- Religion or belief
- Sexual orientation
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity

1.2.14 The EA determines that a person is disabled if they have a physical or mental impairment and that impairment has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.

1.2.15 The main purpose of this pack is to help Disabled People's Organisations and their members to better understand how the Equality Act and other disability laws can help Disabled People to defend and extend their rights. It uses examples of issues faced by Disabled People who face discrimination on a number of grounds.

1.2.16 On the next few pages are definitions of unlawful discrimination experienced by Disabled People. These definitions will be used by the courts and are used when public bodies decide how they will run their services.

### 1.2.17 **Direct Discrimination**

Direct discrimination means treating a person worse than someone else because of their protected characteristic (or combination of protected characteristics).

Direct discrimination is saying to someone "you cannot come in" or "you cannot use this service...because you are a Disabled Person". This type of obvious discrimination is rare but does happen. It is easy to spot and easy to challenge. It is not lawful for



providers of goods, facilities, services and education to discriminate directly against Disabled People.

### 1.2.18 **Indirect Discrimination**

The EA defines Indirect Discrimination as:

“The application of a provision, criterion or practice (without objective justification) which applies equally to everyone, but which has a disproportionately adverse effect on a person with a protected characteristic (or combination of protected characteristics).”

This means treating everyone the same whatever their needs are. Examples of indirect discrimination include:

- Having a reception counter designed for people who are of typical height and who are standing up
- Only having information available in standard sized print and Standard English

These provisions (a high reception desk and inaccessible information) treat everyone the same but discriminate against people of restricted growth, wheelchair users, visually impaired people, sign language users and people with learning difficulties.



### 1.2.19 Discrimination Arising From Disability

The EA defines discrimination arising from disability as:

“Treating a person less favourably as a consequence of a characteristic of their impairment or condition (but not directly because of that impairment or condition).”

This means treating someone worse than someone else because of the way they look, sound or act due to their impairment or condition. Such discrimination is against the law unless a service provider can show that it is necessary. Discrimination arising from disability can only be shown to be necessary if a service provider can prove that they need to do it in order for them to be able to deliver some or all of their services.

For example, if someone gestures a lot, stutters, or has a difference in how they look, these could be called characteristics of their impairments. Inclusion in the EA of ‘discrimination arising from disability’ makes such discrimination against the law. ‘Discrimination arising from disability’ replaces the

previous term of ‘disability-related discrimination’ under the DDA.

### 1.2.20 Discrimination by Perception

Discrimination by perception means treating a person worse than another person because you think they have a particular protected characteristic when really, they do not. This form of discrimination covers a number of protected characteristics. People are protected if a service provider assumes that someone is a Disabled Person even if they are not a Disabled Person.

For example, if someone is prevented from using a service or given a worse service because someone thinks they have a particular impairment, that person can still claim disability discrimination under the EA even if they do not have that impairment.

### 1.2.21 **Discrimination by Association**

The EA defines discrimination by association as:

“Treating a person less favourably (or applying a provision, criterion or practice which has a disproportionately adverse effect on a person) because they are linked or associated with someone who has a protected characteristic (or combination of protected characteristics).”

This means treating a person worse than someone else because they are connected with someone who has a protected characteristic (or more than one protected characteristic). This form of discrimination covers a number of protected characteristics. Making this kind of discrimination unlawful helps those who are discriminated against because of their links with someone who has a protected characteristic.

For example:

- The mother of a disabled child
- The personal assistant of a disabled adult or
- A friend of a Disabled Person

can claim ‘discrimination by association’ if they get a worse service because of their link to that person. It is likely that if this happens, the Disabled Person themselves could also claim unlawful discrimination.

### 1.2.22 **Disability Discrimination - Duty to Make Reasonable Adjustments and Failure to Comply with that Duty**

1.2.23 This is where a provider of goods, facilities, services or education does not:

- Change the physical features of a building
- Provide an additional piece of equipment such as a Braille menu in a café for blind people or an induction loop at a reception desk for hearing impaired people
- Change the way they deliver a service so that a Disabled Person can use it alongside other people

A provider should understand that it is likely that a Disabled Person may need a change to be made. Providers should have a plan in place which makes sure that Disabled People can use their facilities and services.

If a provider doesn't make a change or removes a change that they made before, a Disabled Person can take a case under the EA because 'failure to make a reasonable adjustment' is 'prohibited conduct'.

- 1.2.24 A court will decide whether an adjustment is reasonable or whether a failure to make an adjustment is reasonable by deciding whether or not the action taken was a fair and balanced way of achieving a genuine aim. The definition of a reasonable adjustment has changed. Under the DDA, when deciding whether an adjustment was reasonable, a service provider had to think about how hard it would be for a Disabled Person to use that service without that adjustment being made. Under the EA, it is more important for a service provider to think about how much a Disabled Person

is disadvantaged by their failure to make a reasonable adjustment. This may look like a minor change, but it is supposed to make it easier for Disabled People to argue for reasonable adjustments. Under the EA, discrimination can no longer be defended by arguing that an adjustment is unreasonable. A court must now decide whether or not the discrimination against a Disabled Person was a fair and balanced way for the service provider to achieve a genuine aim.

If a court decides that the discrimination was not 'a proportionate means of achieving a legitimate aim' (or fair), neither the discrimination nor the failure to make a reasonable adjustment can be 'justified' or defended by a service provider. This means that cost can no longer be used on its own to defend a lack of reasonable adjustments.

A service provider who discriminates needs to persuade the court that their discriminatory actions and failure to make a reasonable adjustment were both 'proportionate' (fair) and 'legitimate' (genuine).

If a provider fails to make an adjustment required by a Disabled Person, they should be able to explain this failure on the basis that the adjustment was disproportionate (unfair) and would have prevented them or made it unreasonably hard for them to run their service.

### 1.2.25 Harassment

1.2.26 The EA defines harassment as:

“Harassment means engaging in unwanted conduct, which has the purpose or effect of violating the other’s dignity, or creating an environment for the other that is hostile, intimidating, degrading, humiliating or offensive.”

This means doing or saying things which are disrespectful and hurtful or offending someone by making them feel small, bullied or threatened. In line with other groups who face discrimination, the EA says that Disabled People who are being bullied, picked-on or abused by a service provider (or their representative) can make claims of disability harassment. This does not apply to a Disabled Person

who is harassed on the street or by a neighbour. Such harassment is unlawful but is dealt with through the criminal courts rather than through the EA, which is civil law.

### 1.2.27 Third Party Harassment

1.2.28 Third party harassment means repeated harassment of an employee during the course of their work. This harassment is not by their employers, but by people who use the employer’s services such as customers. Such conduct can also be described as direct discrimination. Third party harassment is mentioned here because it shows how disabled workers are protected by the EA whilst they are at work, from harassment by customers or others who are not their employers. The EA says that the employer has a duty towards Disabled People and everyone else with a ‘protected characteristic’ to do all that they reasonably can to protect them from repeated harassment from a third party while they are at work. Repeated or ‘persistent’ harassment means when three or more occasions



of such treatment happen close together. The person who was harassed should keep a note of the dates and times when the harassment happened.

Unwanted and unwelcome behaviour which is:

- Related to an impairment or perceived impairment
- From a third party during the course of employment
- Repeated is now unlawful.

### 1.2.29 **Victimisation**

1.2.30 Victimisation means treating someone worse than before because they have made a claim of discrimination. They can also be victimised if they have been treated badly because they were a witness for someone else who has taken a case of discrimination.

Anyone who helps someone with a protected characteristic with a claim of discrimination is protected from being victimised. For example, this could happen in a work place where a trade union representative is victimised for supporting a disabled colleague who has been treated unfairly. Victimisation could also

happen when someone is receiving or trying to receive a service. A customer, even someone who is not known to the Disabled Person directly, could be victimised for supporting that person in their claim of disability discrimination. For someone to be protected from victimisation their support has to be genuine. If a complaint of discrimination is spiteful it is unlikely that someone who supports such a complaint would be protected against victimisation.

1.2.31 Under the DDA, someone who had been victimised had to name someone who was in the same position as themselves but who had not been treated in the same way. This person was called the 'comparator'. This was to show that the treatment was because of the claim of discrimination they had supported. Under the EA it is now not necessary for a victimised person to name a comparator. It is unlawful to pick on somebody because they have acted as a witness for a Disabled Person or for someone else who has claimed disability discrimination under the EA.

### 1.2.32 Positive Action

1.2.33 Positive Action is meant to stop past patterns of discrimination and is allowed under the EA. Positive action can be used to provide training or support to people with protected characteristics so that they can compete equally with everyone else for jobs. Positive action means taking positive steps to make sure that people with protected characteristics have certain opportunities which they have not had before because of unfair discrimination. Positive action can be used in service delivery too. It helps to make sure people have equal access to services.

### 1.2.34 Positive Discrimination

1.2.35 Positive discrimination is better treatment of people because they have one or more of the protected characteristics. It is only lawful under the EA so far as Disabled People are concerned. A service provider can positively discriminate in favour of a Disabled Person if not doing so would mean them being treated worse than a non-Disabled Person.

### 1.2.36 The Equality Act (EA) and Disabled People's Organisations (DPOs)

1.2.37 The EA has direct effects on DPOs. The EA applies to any Association of people if:

- It has at least 25 members
- Joining involves following a set of rules
- It is not a trade organisation like a business
- It is not a professional organisation or a trade union

Other parts of the EA cover clubs where you just have to pay a fee and no-one has to decide first whether or not you are allowed to join. A DPO run by a group of friends without any formal structure (such as a book club, a sports group/team or some Access Groups) is unlikely to be an association under the EA. If a DPO has elected officers and people have to follow rules in order to be members, it will probably be treated as an Association under the EA. In this situation all members, associate members or visitors are covered and protected by the EA. This means that the Association

must not break the EA in any of its activities.

Associations which are also charities have to accept and keep to special rules for charities included in the EA which are not included in this information pack. The Act permits Associations of any size or type (but not political parties) to restrict their membership to people who share a protected characteristic.

For example, they are allowed to restrict membership to only Disabled People or women. This means that a DPO is allowed to have just Disabled People sitting on its management committee.

A DPO can also discriminate positively by only employing Disabled People in some or all of its jobs. An Association or charity will not break the law by giving benefits only to people who share a particular protected characteristic if doing so is in line with its rules.

Such benefits should either be:

- A fair and balanced way of achieving a genuine aim or
- To stop or make up for a disadvantage which exists because someone has a protected characteristic

Restrictions based on protected characteristics can also be applied to associates and visitors of an Association or charity. For example, a women-only group can restrict attendance so that only women can come to the group: this includes any visitors. This does not apply if the membership of an Association or group of people who are to receive benefits from the charity is defined by skin colour, for example “for Black People only” which is not allowed. If a DPO meets at the house of a member, that member does not have to make adjustments to the physical features of their house. The DPO may have to change the venue for its meetings to make sure that disabled members can use its facilities and services.

1.2.38 This section of the pack has looked at and explained:

- The background to the Equality Act (EA)
- Prohibited conduct – which is discrimination that is not allowed under the EA
- Positive action – which describes steps that service providers can take to stop past patterns of discrimination
- Positive discrimination – which is lawful action to discriminate in favour of Disabled People
- The rights and responsibilities of Disabled People's Organisations under the Equality Act





## 1.3 The Equality Act 2010 (EA) – Use Your Rights

1.3.1 This section is about how to use the law. In particular, it looks at how disabled individuals can use the Equality Act to make a claim about discrimination.

### 1.3.2 Going to court: advantages and disadvantages.

1.3.3 Taking cases to court or ‘litigation’ can be a useful way of challenging discrimination and increasing public awareness. Public bodies often choose to cut services for people who they think will not fight back, including Disabled People. DPOs and disabled individuals can use the law to discourage organisations from reducing services to Disabled People.

A legal case can still stop cuts even if it is lost.

1.3.4 Legal challenges can make it harder for public bodies to make cuts. Getting publicity about budget decisions and cuts in services can stop or delay these decisions. Publicity can make the public more aware of what is going on and encourage people to take action to stop cuts. Taking legal action can

give people time to start a campaign to stop cuts. Campaigns can make it very hard or impossible for cuts to go ahead. Taking legal action against planned cuts can remind people about the impact they may have on Disabled People.

1.3.5 Going to court usually takes a long time. Other ways of challenging decisions can be used at the same time to provide the best chance of success.

1.3.6 Winning a legal challenge can lead to changes in how services are run. It can make a DPO better known and help to increase its number of members.

1.3.7 On the negative side litigation is often expensive. This is true even if you get Legal Aid to fight the case. There is no guarantee you will win your case. It can take up a lot of your time.

1.3.8 If you take a legal case against a public body this can harm your working relationship with that organisation. It could make it harder for a DPO to work with and persuade a public body to change what it is doing in future. The public body may



decide to take funding away if a DPO takes it to court.

- 1.3.9 There are a number of ways you can use the different laws which cover the rights of Disabled People to be treated equally. Deciding to go to court is usually the last thing to try if other things have not worked.

#### **1.3.10 How Disabled Individuals Can Use the Equality Act (2010)**

- 1.3.11 A Disabled Person can go to the County Court if they want to make a claim against discrimination. If you think an organisation providing goods, facilities or services has discriminated against you or another Disabled Person, going to the County Court is the way to challenge this discrimination.

- 1.3.12 A County Court can tell the service provider to give you some money because they discriminated against you. The court can also tell the service provider what they must do to make sure that they do not discriminate against you again in future.

- 1.3.13 If the service provider carries on discriminating against you after the court has told them

not to, you can go back to court to make them stop.

- 1.3.14 If you do not win your case in the County Court you can ask another court to look at the case again. This is called appealing, or making an appeal.

- 1.3.15 There is a chance that the court will tell you to pay the service provider any money that they have had to spend to answer your claim of discrimination. The court might tell you to pay these costs if you lose your first claim or your appeal.

- 1.3.16 You may get Legal Aid support if you decide to take a case to the County Court. If you apply for legal aid, there are two tests: a Means Test, to see if you have more than £8,000 in the bank or in the value of anything you own, like a house and a Merits Test, to see how strong your case is and if you are likely to win.

- 1.3.17 You are allowed to speak for yourself in the County Court and not use a solicitor. If you do this, you will probably have to do a lot of photocopying and organise the papers you will need in court. This will include finding

and copying any papers you need to back up your case and writing down what you want to say in court. This is called making a witness statement. The court will also ask you to copy papers it needs to decide your case.

- 1.3.18 Hearings or cases in the County Court are usually quite relaxed and straightforward. You should bring with you all the documents you need to prove your case and to deal with anything the other side says about your case. You must bring copies of everything you will be using for the judge and the service provider as well.

The service provider may try to make an agreement (or settlement) with you not to go to court. Their solicitor may tell them that they may lose if the case goes to court. They may not want any bad publicity. This can happen right up to the morning of the hearing. They might be worried that if you win your case they will have to change what they do for other people in the future. They might want to settle with you because it is cheaper than the cost of going to court.

The respondent may offer you some money to drop the case because this could be cheaper for them than paying a solicitor to speak for them. If the service provider offers to settle with you, it may not be because they think they have a weak case. You may decide not to use a solicitor, however businesses usually do. They may pay for a service or have insurance which covers the cost of their solicitor.

- 1.3.19 If you do not agree to settle, you can still go ahead with your claim. If you are offered a settlement but decide to go ahead with your case anyway, the court might decide that you should have accepted the settlement if you then lose your case. If this happens, the court can charge you extra money to cover its costs. If you think you will get more from going to court than from a settlement, you may decide to refuse any offer that you get and go ahead with your claim.

- 1.3.20 It is a good idea to talk to a solicitor about your case, even if you decide to speak for yourself rather than use a solicitor in court.

You should be able to get a couple of hours free advice about your claim even if you cannot find a solicitor to speak for you, free of charge.

#### 1.3.21 Different solicitors are good at different things.

You may be better off doing things yourself than asking a solicitor to help you who:

- You do not feel comfortable and confident with
- Does not know about discrimination
- Won't be good at speaking up for you
- Does not know about the Equality Act (EA) or
- Does not know about taking a case to the County Court

#### 1.3.22 If you win your case at the County Court, that may be the end of the matter. The service provider may do what the court tells them and stop discriminating against you. The service provider might appeal against the decision if they think they stand a good chance of winning or if they are worried about having to change what they do so that they do not discriminate anymore. If there is an appeal, either

by you or by the service provider, any decision made by the court could be used to help decide other cases in future. If appeal decisions are made public ('reported') they are called 'case law'. If an appeal makes a judgment or decision about an issue that has not been thought about before by a court, the decision is called a 'precedent'. Precedents help courts to understand how to decide cases in future. Only appeal decisions can become 'case law' or 'precedents'. Judgments made in the County Court are not made public and are therefore not 'case law' or 'precedents'.

#### 1.3.23 Precedents add to the law by explaining it and showing how it can be used in real life. If you can find precedent cases by searching on the internet which support your case, you can tell the court about them. Courts do not like to have too many precedents explained to them. If you choose carefully, good precedents can be very helpful in persuading the court that you have a good case.

1.3.24 Judges do not like to be told by an appeal court that they have made the wrong decision. Therefore, they will listen carefully if you argue that your case is like one where there is a precedent decision which supports what you are saying. If you settle with a service provider instead of having a hearing, the settlement you agree cannot be seen as a precedent by any court in the future. Agreements to settle are usually private. Both sides usually agree not to talk or share any details about the settlement with anyone else.

1.3.25 Any claim of discrimination against a pupil by a school is taken to the Special Educational Needs and Disability First-Tier Tribunal system (SENDIST).

1.3.26 If a disabled worker wishes to bring a claim against their employer about discrimination or harassment, they would do this at an Employment Tribunal. This is another First-Tier Tribunal like the SEN Tribunal. Tribunals, especially at the first level are usually quite informal and straightforward.

If you are not used to tribunals or feel worried about speaking up for yourself at a tribunal, you should look for someone who knows about them who can help you to prepare and say what you want to say.

Usually, the other side at a tribunal such as a school or employer will have somebody to speak for them and help them put their case. Whether or not you and the other side have someone there to help, you will both be asked to speak.

1.3.27 This section of the pack has looked at and explained:

- The advantages and disadvantages of using the law in court and
- How a disabled individual can make a claim of discrimination

## 1.4 The Equality Act 2010 (EA) – Helpful Resources

### 1.4.1 UK Government's 'Easy Read' version of the EA:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/85039/easy-read.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/85039/easy-read.pdf)

### 1.4.2 Disability Rights UK guide to the EA:

<https://www.disabilityrightsuk.org/equality-act-and-disabled-people>

### 1.4.3 Citizen's Advice on how the EA defines 'disability' and affects disabled people:

<https://www.citizensadvice.org.uk/work/discrimination-at-work/checking-if-its-discrimination/check-if-youre-disabled-under-the-equality-act/>

### 1.4.4 Equality Advisory Support Service provide information, advice and support on discrimination and human rights issues to individuals in England, Scotland and Wales, including advice on what the Equality Act 2010 says and how this applies to Disabled People. They

also provide lots of template letters:

[www.equalityadvisoryservice.com](http://www.equalityadvisoryservice.com)

FREEPOST  
Equality Advisory Support  
Service FPN4431

Phone: 0808 800 0082  
Textphone: 0808 800 0084

If you are Deaf or hard of hearing, you can call RAD through their webcam portal at <http://www.royaldeaf.org.uk/webcam/> to speak to an adviser in British Sign Language or text chat.

They also run a government funded helpline that has replaced the Equality and Human Rights Commission (EHRC) Helpline:

Phone: 0800 444 205  
Textphone: 0800 444 206

### 1.4.5 EHRC guidance for service users about their rights under the Equality Act 2010:

<https://www.equalityhumanrights.com/en/advice-and-guidance/guidance-service-users>





## 2 The Public Sector Equality Duties (PSED)

## 2.1 Public Sector Equality Duty (PSED) – The Basics

### 2.1.1 What is it?

PSED is part of the Equality Act 2010 (EA).

The General Duty aims to make sure public authorities think about how they can contribute to a fairer society. They have to consider how they will eliminate unlawful discrimination, make sure people with different characteristics have the same opportunities and foster good relationships between people with different characteristics.

The Wales specific duties aim to help public bodies carry out the General Duty and be more transparent. It means bodies must publish information about how they have complied with PSED, including a strategic equality plan and equality objectives. They must also engage with equality groups when carrying out specific duties.

### 2.1.2 Who does it affect?

The General Duty applies to most public authorities and private or third sector organisations if they are carrying out public functions. (The full list of bodies covered by the duty can be found here: <https://www.legislation.gov.uk/ukpga/2010/15/schedule/19>)



The Wales specific duties apply to public bodies in Wales and those which cross the border between Wales and England.

### 2.1.3 What does it mean for Disabled People?

The General Duty states that Disabled People's needs are different from those of non-Disabled People. It says that public bodies should take account of Disabled People's impairments or conditions. This could be by making reasonable adjustments. The General Duty means public bodies have to advance or improve Disabled People's equality. Advancing equality of opportunities for Disabled People involves:

- Removing or reducing disadvantages suffered by Disabled People
- Meeting the needs of Disabled People
- Encouraging Disabled People to participate in the wider community

## 2.2 Public Sector Equality Duty (PSED) – Know Your Rights

2.2.1 [Section 2.3](#) of the pack is about the Equality Act (EA). It looks in particular at the Public Sector Equality Duty (PSED), which is part of the EA.

### 2.2.2 Background to PSED

2.2.3 These are rules for public bodies and others carrying out public functions. Public functions are services to the public but not the internal business activity of public bodies. Internal business activity is when one part of a public body needs to talk to other parts of the same body. The Public Sector Equality Duty (PSED) replaces three old Public Sector Equality Duties for disability, race and gender. It covers all nine protected characteristics.

A review of the PSED in Wales was carried out by the Equality and Human Rights Commission (EHRC) in 2014. It concluded that the PSED is working effectively in Wales and should be retained. All organisations have been able to demonstrate how the PSED supports work to meet its three aims.

## 2.2.4 The General Duty

2.2.5 The General Duty is at **Section 149 of the Equality Act**. It has three aims. It requires public bodies to make sure that they:

- Stop unlawful discrimination, harassment and victimisation
- Work to make opportunities equal for people from different groups
- Encourage good relations between communities

This means that a public body needs to consider the three aims when it makes decisions. Equality issues must be considered when public bodies are deciding how they:

- Act as employers
- Decide how they will run services
- Arrange, organise and review these services
- Buy goods and services from others

The General Duty states that Disabled People's needs are different from those of non-Disabled People. It says that public bodies should take account of Disabled People's impairments or conditions. This could be by making reasonable adjustments. The General Duty means public bodies have to advance or improve Disabled People's equality. Advancing equality of opportunities for Disabled People involves:

- Removing or reducing disadvantages suffered by Disabled People
- Meeting the needs of Disabled People
- Encouraging Disabled People to participate in the wider community and in other activities where their participation is low



## 2.2.6 The Specific Public Sector Duties for Wales

2.2.7 **Section 153 of the EA** gives the Welsh Government the right to make laws about what the public sector has to do. These rules started on 6th April 2011 and apply to public bodies in Wales and those which cross the border between Wales and England.

The Specific Public Sector Duties for Wales are stronger than those for the rest of the UK. The duty to ask Disabled People and others with protected characteristics about plans to change public services has been mostly removed from the Specific Public Sector Duties in the rest of the UK. The Welsh Government says that all public bodies must set clear goals to show that they are treating everybody equally. These goals are called Equality Objectives.

Public bodies in Wales have to make sure that the ways in which they run services treat people equally, so they must carry out equality impact assessments. In Wales this means that there are rules that public bodies have to follow to ask people with protected characteristics what changes are needed to improve their services.

These rules do not exist in the rest of the UK.

Public bodies in Wales have to publish a document which shows what they are going to do to improve services for people with protected characteristics. These documents are called Strategic Equality Plans (SEPs).

Public bodies must ask Disabled People and others about how these SEPs should be carried out and report back to the community on the use of these plans. They must look to see if aims have been met and tell people about any aims that have not been met.



Private companies acting for the Government are covered by the Duty – but only their public functions are covered. If a public body pays for a service from a private company to be delivered on its behalf, it has to supervise and monitor that service to make sure that it keeps to the PSED. For example, NHS Wales asks general practitioners, dentists, pharmacists and voluntary organisations to carry out some of its public functions by providing services to the public in Wales. NHS Wales has a duty to ensure that these organisations keep to the PSED.

2.2.8 This section of the pack has looked at and explained:

- The background to the PSED
- The difference between the General Public Sector Equality Duty and the Specific Public Sector Equality Duties that apply to organisations which are partly or entirely based in Wales.



## 2.3 Public Sector Equality Duty (PSED) – Use Your Rights

- 2.3.1 This section is about what the Public Sector has to do to make sure Disabled People and other people with protected characteristics are treated fairly. In particular, this section of the pack looks at the General and Specific Public Sector Equality Duties (PSEDs).
- 2.3.2 These clauses of the Equality Act (EA) and decisions made by the Welsh Government about how the law should be understood, show how Disabled People and others must be protected from discrimination by public bodies.
- 2.3.3 Most importantly the PSED to show public bodies how they can ‘do the right thing’. This is especially true in Wales where the PSED is stronger and more detailed than in the rest of the UK.
- 2.3.4 Disabled People’s Organisations (DPOs) can help public bodies to decide what changes are most important. A DPO can find out the views of Disabled People about what services

need to change. DPOs can also ask Disabled People how any proposed cuts in services would affect them. This information can then be used by DPOs to help public bodies make sure that they do what they are supposed to under the PSED.

- 2.3.5 A public body draws up Equality Objectives under the PSED. These help public bodies measure how well they are doing in promoting Disabled People’s equality. To draw up these Equality Objectives, public bodies have to decide what the most important things to change are.

DPOs can help a public body decide its Equality Objectives by sharing the views of their members about issues like independent living. A DPO needs to make sure that it has an agreed way of telling public bodies in the area about these views. If the public body is doing its job properly, it should take notice of what local Disabled People are saying and make sure that Equality Objectives address the issues raised by them.

2.3.6 Some Disabled People and their organisations have used the PSED successfully to put pressure on their local councillors, Members of the Senedd (MS) and Members of Parliament (MPs).

2.3.7 Often, planned changes to the way services are run have been stopped or altered by people who have argued that these changes would mean that Disabled People will not be treated equally. Public bodies have had to change their plans because what they want to do is against the PSED and therefore breaks the law.

2.3.8 If you think what a public body is doing or plans to do is against the PSED, you should try to persuade them that this is the case. Public bodies will usually have complaints and appeals procedures. You should try using all of these to persuade the public body not to discriminate. If you cannot persuade the public body that what it is doing or wants to do is against the PSED, you can ask other people to look into the problem.

2.3.9 You can ask an Ombudsman to look into the problem. Which Ombudsman you ask to do this will depend upon which service is discriminating against you.

In Wales there is one Public Service Ombudsman department which looks at all complaints about public services in Wales, including complaints about local authority services, the Welsh Government and the emergency services.

If you want to complain about a service that is UK-wide, such as Jobcentre Plus, Access to Work or the Courts, complaints can be made to the Parliamentary and Health Service Ombudsman. Instead of going to an Ombudsman, you can ask the Equality and Human Rights Commission (EHRC) to look into the problem for you. The law says that it is the job of the EHRC to do this. The EHRC can tell the public body to change what it is doing if it believes that the public body is doing something that is against the PSED. The EHRC can issue an enforcement notice making the public body keep to the PSED.

2.3.10 You can also ask a solicitor to help you take the public body to court to see if the court thinks what it is doing or plans to do is against the PSED. If you do this, there will need to be one or more disabled individuals who are directly affected by what the public body wants to do. Cases must be taken in the name of individuals. This kind of legal case is called a Judicial Review. To win a Judicial Review, you need to show that what the public body is doing or wants to do has a larger negative affect upon Disabled People than it does on others. Each of these ways of challenging a public body – going to an Ombudsman, the EHRC, or asking for a Judicial Review – should only be tried if complaining directly to the public body has been unsuccessful. The courts, the EHRC and an Ombudsman will not be willing to look at your case if the public body has not finished looking at it first. If your complaint is urgent, if the public body is taking a very long time or refuses to look at your complaint, you may be able to persuade the Court, the EHRC or the appropriate Ombudsman to investigate.

2.3.11 There have been some cuts in Legal Aid funding for some types of legal cases. When this pack was written, the Legal Aid Agency (LAA) which decides who gets Legal Aid, was still paying for some Judicial Review cases taken by Disabled People against public bodies.

2.3.12 It is not a good idea to ask for a Judicial Review without using a good solicitor who knows about them. The High Court is very formal. It is difficult to understand what is going on if you do not know how it works. The High Court is where Judicial Reviews are heard. It is very rare for anyone apart from a barrister, a judge or a solicitor to be allowed to speak in the High Court.

2.3.13 If you ask for Legal Aid, the LAA will decide how strong it thinks your case is. If it thinks you stand a good chance of winning, the LAA may agree to pay for your solicitor and barrister in a Judicial Review hearing. The same applies to any appeal. If the LAA decides not to pay for your Judicial Review or appeal, you will need to find other funding if you want to go ahead with it. If you lose and



do not have legal aid, the court may ask you to pay the costs of the other side which can be very expensive.

2.3.14 A well-funded charity or campaigning body might decide to help you pay for your case, if you can persuade them that the case is an important precedent. This is rare and the charity or campaigning body may want something in return. This might mean you lose some control over the case. You might decide it is better to go ahead even if you have to compromise. You are the only person who should decide this.

2.3.15 If you lose your claim and any appeal in any other court, or you lose in a Second-Tier Tribunal (for example against a cut in benefits or about discrimination against a school student) you can ask that court for permission to take your case to the Court of Appeal.

2.3.16 This section of the pack has looked at and explained:

- How the General and Specific Public Sector Duties work in Wales and
- How to make sure public bodies stay within the law and do what they are supposed to under the PSED





## 2.4 Public Sector Equality Duty (PSED) – Helpful Resources

- 2.4.1 An overview of the EHRC report on PSED and how it's working in Wales:

<https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty-wales>

- 2.4.2 A summary of the EHRC report on PSED and how it's working in Wales:

<https://www.equalityhumanrights.com/en/publication-download/review-public-sector-equality-duty-psed-wales-executive-summary>

- 2.4.3 A list of local authorities and what they are doing to comply with PSED, compiled by EHRC:

[https://www.equalityhumanrights.com/sites/default/files/psed\\_examples\\_report\\_english.pdf](https://www.equalityhumanrights.com/sites/default/files/psed_examples_report_english.pdf)

- 2.4.4 EHRC Essential Guide for Public Authorities in Wales:

<https://www.equalityhumanrights.com/en/publication-download/essential-guide-public-sector-equality-duty>

- 2.4.5 Citizens Advice guidance about PSED:

<https://www.citizensadvice.org.uk/wales/law-and-courts/discrimination/public-sector-equality-duty/what-s-the-public-sector-equality-duty/>



### 3 United Nations Convention on the Rights of Disabled People (UNCRPD)

### **3.1 United Nations Convention on the Rights of Disabled People (UNCRDP) – The Basics**

#### **3.1.1 What is it?**

The UNCRDP is an international human rights treaty which the UK has ratified. This means that the UK has agreed to follow the convention and protect and promote the human rights of disabled people.

The Convention has two parts. Part one describes the 17 rights that Disabled People have under the UNCRDP (which are laid out in [section 3.2](#) of this toolkit). Part two is the 'Optional Protocol' which describes the powers Disabled People have and how they can use the Convention.

#### **3.1.2 Who does it affect?**

The UNCRDP uses a definition of disability which is closer to the Social Model of Disability. It looks at what needs to change in society for Disabled People to be treated equally rather than what people cannot do because of their impairments.

It can be used to challenge discrimination by the Government or other national public bodies.

#### **3.1.3 What does it mean for Disabled People?**

The UNCRDP is useful for Disabled People who want to make sure that public bodies do not discriminate against them because it contains clear examples of how Disabled People should be treated by public bodies.

However, because the UNCRDP is not part of UK domestic law, if you want to bring a legal case under the UNCRDP, it needs to be a case under the Human Rights Act or Equality Law. The courts and Disabled People find the UNCRDP helpful because it explains clearly how Disabled People's rights under the EA and other laws should be applied and understood.

## 3.2 United Nations Convention on the Rights of Disabled People (UNCRDP) – Know Your Rights

3.2.1 Section 3.2 is about the UNCRDP. It looks in particular at what rights Disabled People have under the UNCRDP.

### 3.2.2 Background to the UNCRDP

3.2.3 United Nations Convention on the Rights of Persons with Disabilities (UNCRDP) was agreed by the United Nations (UN) in 2006. The UK made it law in Wales, Scotland, The North of Ireland and England in 2009.

Even though the convention is on the rights of 'persons with disabilities' it is referred to as the convention on the rights of 'disabled people' in the UK as the UK has adapted the 'social model' of disability.

### 3.2.4 Definitions

3.2.5 The UNCRDP has two parts. It uses a definition of disability which is closer to the Social Model of Disability adopted by the Disabled

People's Movement. 'Impairment' and 'disability' are sometimes used to mean the same things in the UNCRDP.

The definition of Disability used in the EA talks about what people 'cannot do' because of their impairments. The UNCRDP looks at what needs to change in society for Disabled People to be treated equally.

The Convention does not explicitly define disability but the preamble says that disability is an evolving concept which results from interaction between people with impairments and barriers caused by the attitudes of others and the environment they are in.

Article 1 of the Convention states:

**'Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others'**

3.2.6 Part One 'The Convention' describes the rights of Disabled People under the UNCRDP. Part Two is the 'Optional Protocol' to the Convention. This describes the powers Disabled People have to use the Convention.

### 3.2.7 **The Rights of Disabled People Under the UNCRDP**

3.2.8 The UNCRDP contains 17 rights for Disabled People:

- The right to be treated equally (Article 5)
- The right to life, freedom and safety (Articles 10-14)
- The right to be treated fairly, make decisions about your life and independence, with help if necessary (Article 12)
- The right not to be abused (Article 15)
- The right to be protected from violence (Article 16)
- The right to think for yourself and make choices about your life (Article 17)
- The right to travel and decide where you live, including in which country you live (Article 18)
- The right to live independently and in the community and to choose not to live in an institution (Article 19)
- The right to speak out,

which is called the freedom of expression (Article 21)

- The right to privacy and to have that privacy respected (Article 22)
- The right to a home and family life and for that to be respected (Article 23)
- The right to receive equal education with non-Disabled People (Article 24)
- The right to access health services on an equal basis with others (Article 25)
- The right to work and the tools, equipment and support you need to do so (Article 27)
- The right to a decent standard of living (Article 28)
- The right to take part in politics, community and public life (Article 29)
- The right to a social life and to access leisure facilities (Article 30)

### 3.2.9 **UNCRDP Rights – Explained**

3.2.10 The UNCRDP contains the fullest list of rights for Disabled People in any UK legislation. If a Disabled Person lives in any of the countries which have signed up to the UNCRDP they



should be able to rely on using these rights.

The rights in the Convention are mostly covered by the UK's equality and human rights legislation. The UNCRDP also contains a number of rights not listed in other UK laws. The rights of disabled women are in Article 6 of the UNCRDP. The rights of disabled children are in Article 7. The responsibility of government to 'raise awareness' of disability issues is contained in Article 8.

3.2.11 The right to life (mentioned above) is in Article 10. It was included in the UNCRDP to protect Disabled People because some countries are changing their laws about whether Disabled People can be helped to kill themselves if they choose to.

3.2.12 Articles 12, 13 and 15 ban torture of and cruelty to Disabled People. They also make it illegal for courts, the police and prisons to discriminate against Disabled People. Although all of these rights are parts of other UK laws, they are not written into those laws as clearly as they are written into the UNCRDP.

3.2.13 The right to independent living in the UNCRDP has been accepted by the Welsh Government. In 2012, it published a draft 'Framework for Action on Independent Living'. The Framework has the same ideas and rights as the six priorities in the Manifesto for Independent Living published by Disability Wales in 2010.

3.2.14 The courts and Disabled People find the UNCRDP helpful because it explains clearly how Disabled People's rights under the EA and other laws should be applied and understood. The next section of this document ([3.3 - 'Use Your Rights'](#)) explains that the UNCRDP cannot be used on its own.

3.2.15 This section of the pack has looked at and explained:

- The background to and definitions used under the UNCRDP
- The specific rights of Disabled People under the UNCRDP and what these rights mean for Disabled People.

### 3.3 United Nations Convention on the Rights of Disabled People (UNCRDP) – Use Your Rights

3.3.1 This section is about the UNCRDP. It looks in particular at the different ways you can use the UNCRDP.

3.3.2 If you want to bring a legal case under the United Nations Convention on the Rights of Disabled People (UNCRDP), it will need to be a case under the Human Rights Act or Equality Law. You cannot bring a legal case just using the UNCRDP. You can use the UNCRDP to make your case stronger.

3.3.3 There are lots of ways you can use the UNCRDP. You can use it for things that go on in your local area. You can also use it to challenge discrimination by government or other national public bodies.

3.3.4 The different ways you can use the UNCRDP include:

- Situations where the discrimination which has happened is against other UK laws like the Equality

Act (EA) or the Human Rights Act (HRA)

- Complaining directly to a public body about what it has done or
- Going to an organisation set up to deal with complaints like the Public Service Ombudsman for Wales or the Care Inspectorate Wales (CIW).

3.3.5 To make a case using the UNCRDP you should:

- Work out which article or articles in the UNCRDP cover your complaint
- Try to sort things out by pointing out to the public body which articles in the UNCRDP cover the situation
- If that does not work, make an official complaint to the public body, reminding it that it is going against the UNCRDP
- If that does not work, write to your councillor, Member of Parliament (MP) or Member of Senedd (MS) telling them about your complaint
- If none of this changes the actions of the public body, you can go to court and mention the UNCRDP as well as any other law that the public body is breaking.

3.3.6 Apart from going to court, you can use articles from the UNCRDP to make sure that public bodies – and private companies running public services for them – keep to the Public Sector Equality Duty (PSED) and the HRA.

3.3.7 The UNCRDP is very useful for individual Disabled People who want to make sure that public bodies do not discriminate against them. This is because the UNCRDP contains clear examples of how Disabled People should be treated by public bodies. This is most important in situations which are not included in other laws like the Human Rights Act for example. The UNCRDP says that Disabled People must be treated equally when using health services. The detail in the UNCRDP about Disabled People's rights to equal treatment by health services are not included in any other law.

3.3.8 If you do not like the way public services are run, you can use the UNCRDP to get public bodies to think again.

You can use the UNCRDP to argue for more Blue Badge parking spaces. You can

use it to complain about staff prejudice or personal discrimination against you. You can also use the UNCRDP if you want to complain about long waiting times for health treatments. If you want to complain about local services being discriminatory, first work out which article or articles of the UNCRDP cover your situation. Tell the public body and the local press why the public service isn't as good as it should be because of what the UNCRDP says. You can also use the internet to make sure other people know about your complaint. This may help you by getting other people to complain as well. When you complain, you should also say what the public body should do so that it does not discriminate or go against the UNCRDP.

3.3.9 It is against the law if a public body cuts services which are essential to Disabled People because this goes against what the UNCRDP says.

3.3.10 If it looks like there are going to be cuts to local public services, do not forget to make this point about the UNCRDP, very strongly.

3.3.11 The UNCRDP can also be used to argue for better public services if services currently do not treat Disabled People fairly. You can ask your local Council to say publicly that it supports the UNCRDP. To do this, you should write to the Council Leader and to the Chief Executive's Department.

3.3.12 If you want to complain about national government or a national public service, you need to make sure that the service has a fair chance to deal with your complaint first. If this does not work, you can ask the UN Disability Committee to look into your complaint.

3.3.13 Part Two of the UNCRDP which is called the Optional Protocol, says that the Committee can look at individual cases. The UN Disability Committee can also look into situations where a lot of people are reporting that the Government is doing something which is breaking the UNCRDP.

3.3.14 Any person from a country that has agreed to the Optional Protocol can contact the UN Committee. You can ask the Committee

to have a fresh look at the problem. If they agree with you that the public service you are complaining about is breaking the UNCRDP, the Committee can then put pressure on the UK Government or the public body concerned to change what it is doing and stop discriminating.

3.3.15 Governments that have agreed to use the UNCRDP as part of their law, have to give the UN Disability Committee regular updates about what they are doing to make sure that they are keeping to the UNCRDP. These updates are made public on the internet.  
<http://www.ohchr.org/EN/HRBodies/CRPD/Pages/SPReports.aspx>

3.3.16 This section of the pack has looked at and explained:

- How to use the UNCRDP in campaigns and in court
- How to complain to the UN Disability Committee using the UNCRDP

### 3.4 United Nations Convention on the Rights of Disabled People (UNCRDP) – Helpful Resources

- 3.4.1 UK report on the UNCRDP and how it is being implemented in the UK:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/345120/uk-initial-report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/345120/uk-initial-report.pdf)

- 3.4.2 Information about the Committee on the Rights of People with Disabilities (CRDP):

<https://www.ohchr.org/EN/HRBodies/CRPD/Pages/QuestionsAnswers.aspx>

- 3.4.3 Information about the UN Special Rapporteur for the rights of disabled people in the UK and the thematic reports recently published:

<https://www.ohchr.org/en/issues/disability/srdisabilities/pages/srdisabilitiesindex.aspx>

- 3.4.4 The EHRC guide to the UNCRDP and what it means for Disabled People:

<https://www.equalityhumanrights.com/en/publication-download/united-nations-convention-rights-persons-disabilities-what-does-it-mean-you>





## 4 Freedom of Information Act 2000 (FOI)

## **4.1 Freedom of Information Act 2000 (FOI) – The Basics**

### **4.1.1 What is it?**

The Freedom of Information Act (FOI) gives everyone the right to request information from public authorities. Public bodies have to give you general information about how public services are run and delivered if you make a proper FOI request.

### **4.1.2 Who does it affect?**

The Act covers any recorded information that is held by a public authority in England, Wales and Northern Ireland, and by UK-wide public authorities based in Scotland.

Public authorities include government departments, local authorities, the NHS, state schools and police forces. Recorded information includes printed documents, computer files, letters, emails, photographs, and sound or video recordings.

### **4.1.3 What does it mean for Disabled People?**

Making a Freedom of Information (FOI) request can be a good way of asking for the information you need from a public body in order to argue your case or make a claim.

Under the FOI Act anyone has the right to ask any public sector body for the recorded information they have on any subject. FOI requests can show how money has been spent, what a public body has done or what it plans to do.

## 4.2 Freedom of Information Act 2000 (FOI) – Know Your Rights

- 4.2.1 [Section 4.3](#) of this pack is about FOI. It looks at how to ask questions under the FOI Act when preparing an argument or case under equality legislation.
- 4.2.2 Making a Freedom of Information (FOI) request can be a good way of asking for the information you need from a public body in order to argue your case or make a claim under the Equality Act (EA), the Public Sector Equality Duty (PSED) and/or the United Nations Convention on the Rights of Disabled People (UNCPRD). Under the FOI Act anyone has the right to ask any public sector body for the recorded information they have on any subject. There are no restrictions on your age, nationality or where you live. If you ask for information about yourself, your request will be dealt with under the Data Protection Act and not the FOI Act.

Public bodies have to give you general information about how public services are run and delivered if you make a proper FOI request.

Public bodies can refuse to answer your questions if doing so would mean that someone else's private information would have to be shared with you. They can refuse to answer your questions if they would have to break the law in order to answer them. FOI requests can show how money has been spent, what a public body has done or what it plans to do.

- 4.2.3 This section of the pack has looked at and explained:
- What the FOI Act is and
  - How to ask FOI Act questions

## 4.3 Freedom of Information Act 2000 (FOI) – Use Your Rights

4.3.1 This section of the pack explains that you can ask public bodies to give you information which will help you argue a case under the Equality Act (EA), The Public Sector Equality Duty (PSED), The United Nations Convention on the Rights of Disabled People (UNCRDP) and other laws. Doing this will help make sure that the information you use in campaigns or in court is up-to-date and is about the actual service which is discriminating.

You can ask about how public bodies pay for services and how much money they spend on a service. You can also ask about how a service is run and how a public body has decided which parts of its services are most important.

4.3.2 To ask a public body about these things, you need to make a Freedom of Information (FOI) request. You can do this using email or in a letter.

When making a FOI request, you should include:

- Your name
- An address where you can be contacted
- A detailed explanation of the actual information you want

4.3.3 You should be as clear and precise as possible when explaining what information you need. Remember, public bodies can only tell you about services which they themselves provide.

4.3.4 It is sometimes free to make a FOI request. Public bodies will tell you if you have to pay anything for their costs including staff time, postage, photocopying etc.

- 4.3.5 You should get all the information you have asked for within 4 weeks of making your FOI request. If the public body needs more time to find the information you have asked for, they will contact you and tell you how long it will be before they will answer your FOI request.
- 4.3.6 You should ask the public body to answer your FOI request in the way which is best for you. If you require your answer to be in Braille, Easy Read, large print or by email, the public body should do this. The Equality Act (EA), the Public Sector Equality Duty (PSED) and The United Nations Convention on the Rights of Disabled People (UNCRDP) all say that public bodies should be ready to write to Disabled People using the format which is best for them. This means that the law says that public bodies in particular have to make sure that they are treating Disabled People equally. This includes making information accessible to Disabled People.
- 4.3.7 If you want to make a FOI request to a government department, government agency or other public body, you can find their contact details: <https://www.gov.uk/government/organisations>
- 4.3.8 You could check to see if the organisation you are making a FOI request to has given the information recently because someone else has already asked for it. Public bodies may share this kind of information on their website. You can ask for all the information used to answer your FOI request to be given to you with the names and other private details of individuals taken out. You can ask for the main points to be given to you instead of all the information. How you want to use the information you get will help you to decide how much information you ask for.
- 4.3.9 If you want to share the information you get from the public body with other people, you need to ask the public body if they will agree to this. This is because the information may belong just to the public body and be covered by copyright.



- 4.3.10 A public body should not refuse a reasonable request from you to share with other people anything which they have already shared with you. This is because they have given it to you and you are a member of the public.
- 4.3.11 Public bodies should have information on their websites and at their reception desks about how to make a FOI request to them. Answers to FOI requests can be used to argue your case against discrimination. If the information you get back from a FOI request helps you to prove your point about discrimination, you can use the answer to argue for a change in how services are run so that Disabled People are treated equally in future.
- 4.3.12 Public bodies have some information which they cannot share. This can be because it is private to individuals, like people's names and addresses. Another example of this kind of information would be details of contracts that the public body has. Some of these might be private because the public body does not want other people who provide the same services to know what a contract says. This kind of information cannot be obtained by making a FOI request.
- 4.3.13 If a public body will not give you some or all of the information you have asked for, it has to tell you why.
- 4.3.14 A public body can say no to your request if they think it will cost them more than £450 (£600 for a Central Government Organisation) to deal with your request. A public body might ask you to say more precisely what information you need. It might do this so that it can answer your questions without spending too much money to work out the answers.

4.3.15 If a public body does not answer your FOI request, you should first contact them and ask them why they have not answered. If you are not happy with the reason the public body gives you, you can complain to the Information Commissioner. To find out more about doing this: <http://www.ico.org.uk/complaints>

4.3.16 Remember, the Data Protection Act and not the FOI Act can be used to find out information about yourself. For example, this is information kept by your employer in its personnel department, your doctor or your bank. The Environmental Information Regulations exist so that people can ask questions about what is going on in the local environment. The Data Protection Act and the Environmental Information Regulations are different to the Freedom of Information Act. Depending on what your request is about, you need to ask questions using the right law.

## 4.4 Freedom of Information Act 2000 (FOI) – Helpful Resources

4.4.1 The UK government has a list of government departments, government agencies, and other public bodies. It lists their contact details here:

<https://www.gov.uk/government/organisations>

4.4.2 Information about the Information Commissioner and how to make complaints about public bodies can be found here:

<http://www.ico.org.uk/complaints>

4.4.3 The charity Cerebra has lots of useful letter templates, including one for requesting information under the FOI Act:

<https://cerebra.org.uk/download/we-want-to-ask-for-information-under-the-freedom-of-information-act/>



## 5 The Socio-Economic Duty (SED)

## 5.1 The Socio-Economic Duty (SED) – The Basics

### 5.1.1 What is it?

The Socio-Economic Duty (also called ‘the SED’) is a part of the Equality Act (2010) legislation and is due to come into effect on 31<sup>st</sup> March 2021.

People who have low wealth or no income or live in a deprived area are at a ‘socio-economic disadvantage’. Because of this disadvantage they usually see poorer outcomes, such as having a lower life expectancy, poorer health, or not achieving as well as others in education.

The SED aims to deliver better outcomes for people who experience socio-economic disadvantage. By making it law that certain public bodies have to consider how they can reduce inequalities of outcome that result from socio-economic disadvantage.

### 5.1.2 Who does it affect?

The public bodies captured by the SED are:

- The Welsh ministers
- Local authorities
- Local health boards
- NHS trusts
- Special health authorities (operating on a Wales-only basis)
- Fire and rescue authorities
- National park authorities
- The Welsh revenue authority.

### 5.1.3 What does it mean for Disabled People?

Disabled People are more likely than non-disabled people to be at a socio-economic disadvantage due to higher rates of poverty and unemployment<sup>3</sup>. So public bodies need to consider how disabilities (and other protected characteristics) intersect with socio-economic disadvantage.

3 Putz, C (2021). Outcomes for disabled people in the UK: 2020 [online]. Available from <https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/disability/articles/outcomesfordisabledpeopleintheuk/2020#employment>. Accessed 23rd April 2021



When making important decisions, the public bodies captured by the Duty should consult and engage with the communities their decisions will affect to understand their requirements and views.

If you have been adversely affected by the decision of a public body because they have not complied with the Duty, you can resolve your concerns through the relevant body's formal complaint's procedure. If this fails, you may be able to bring a judicial review claim against that authority.

## 5.2 The Socio-Economic Duty (SED) – Know Your Rights

5.2.1 [Section 5.3](#) of the pack is about the Equality Act (EA). It looks in particular at the Socio-Economic Duty (SED), which is part of EA.

### 5.2.2 Background to SED

5.2.3 The Socio-Economic Duty was part of the EA, but when the EA was enacted, SED did not take effect immediately. Wales was given the power to begin SED in 2017 and the legal Duty was commenced on 31st March 2021.





The overall aim is to deliver better outcomes for people who experience socio-economic disadvantage.

- 5.2.4 SED requires public bodies captured by the Duty to give due regard, when they're making strategic decisions, to how their decisions may reduce inequalities that result from socio-economic disadvantage.

In the SED Statutory Guidance document, 'Strategic decisions' are decisions that affect how a public body fulfils its purpose, (for example, decisions about key policies, setting objectives or service delivery and improvement plans). It does not include routine, 'day-to-day' decisions. The Duty applies to both new strategic decisions and when reviewing previous strategic decisions.

'Due regard' means giving proper consideration about issues that are proportional to how relevant those issues are.

'Socio-economic disadvantage' means living in less favourable social and economic circumstance than others in the same society. For example, it could be not having enough money to meet basic needs, such as rent, food, and transport, or it could be living in deprived communities, or not having access to the same education opportunities as other people.

So public bodies need to consider how any big decisions they make, such as creating new key policies, will positively or negatively affect people, and whether their decision will have a different impact on people because of their socio-economic status.

- 5.2.5 The public bodies captured by SED are:

- The Welsh ministers
- Local authorities
- Local health boards
- NHS trusts
- Special health authorities (operating on a Wales-only basis)
- Fire and rescue authorities
- National park authorities
- The Welsh revenue authority.

Only these public bodies are bound by the duty, so if they partner with other organisations or outsource or commission work, the Duty does not apply to the partner organisation/s or third party they have commissioned.

- 5.2.6 Public bodies should provide evidence to prove that they have considered how they are meeting their statutory requirements under the Duty. They can decide how they will provide evidence, but the statutory guidance encourages the use of systems that already exist, like assessments.

## 5.3 The Socio-Economic Duty (SED) – Use Your Rights

- 5.3.1 This section is about what public bodies have to do to fulfil their Socio-Economic Duty (SED). It looks in particular at how this Duty will affect Disabled People.
- 5.3.2 Disabled People are more likely than non-disabled people to be at a socio-economic disadvantage. So public bodies need to consider how Disabilities (and other protected characteristics) intersect with socio-economic disadvantage.
- 5.3.3 Public bodies should collect evidence that they are performing the duty and are encouraged to do this by using methods that have already been established, such as Equality Impact Assessments.

5.3.4 Public bodies should engage with the groups affected by the decision and consider communities and places that are likely to be affected. So DPOs can help public bodies understand what impact their decision will have on disabled communities, and whether it will have a negative or positive effect on Disabled People who live in poverty.

5.3.5 The SED does not create new rights for individuals that could be determined by a court of law (judiciable rights). However, once the duty has commenced, if a public body captured by the Duty fails to perform the Duty, an individual or group whose interests are adversely affected by that public body's decision, may be able to bring a judicial review claim against the authority.

This means if a relevant public body cannot provide evidence that they have performed the Duty and considered how their strategic decisions will affect Disabled People, you could challenge the authority that made those decisions in court that their decision was unlawful because they did not perform their Socio-Economic Duty.

5.3.6 Because socio-economic status is not a protected characteristic in the Equality Act (2010), the Equality and Human Rights Commission (EHRC) does not have the power to make authorities carry out their socio-economic duties.

The EHRC does have powers to provide advice and guidance to public bodies on implementing SED, and if an authority fails in their duty, the EHRC may support an individual or group regarding a challenge.

5.3.7 This section of the pack has looked at:

- How the Socio-Economic Duty affects Disabled People and
- How courts and the EHRC can help Disabled People challenge decisions

## 5.4 The Socio-Economic Duty (SED) – Helpful Resources

- 5.4.1 The Welsh Government's answers to Frequently Asked Questions about SED:

<https://gov.wales/socio-economic-duty-overview>

- 5.4.2 The Welsh Government's short factsheet about SED:

<https://gov.wales/sites/default/files/publications/2020-07/commencing-socio-economic-duty-factsheet.pdf>

- 5.4.3 The Welsh Government's short information guide:

[https://gov.wales/sites/default/files/publications/2020-10/socio-economic-duty-supporting-information\\_0.pdf](https://gov.wales/sites/default/files/publications/2020-10/socio-economic-duty-supporting-information_0.pdf)

- 5.4.4 The consultation documents that the Welsh Government used to help them write SED policy, including a summary of responses:

<https://gov.wales/equality-act-2010-commencing-socio-economic-duty>

- 5.4.5 The Welsh Government's Statutory Guidance:

<https://gov.wales/socio-economic-duty>

- 5.4.6 The Welsh Government's animation film:

<https://gov.wales/more-equal-wales-socio-economic-duty>

- 5.4.7 The Welsh Government's link to lived experiences films:

<https://www.youtube.com/playlist?list=PLHBVoCVw4X-ZRI-dozMDNNT4hfdfb3EBKq>



## 6 Well-being of Future Generations Act (WFG Act)



## 6.1 Well-being of Future Generations (Wales) Act 2015 (WFG Act) – The Basics

### 6.1.1 What is it?

The WFG Act aims to improve the social, economic, environmental and cultural wellbeing of Wales by making certain public bodies think more about the long-term and work better with people and communities. It says that public bodies and the Welsh Government must consider people now and people in the future when they make decisions.

The law has seven wellbeing goals which all the public bodies covered by the Act must contribute to:

1. A prosperous Wales
2. A resilient Wales
3. A healthier Wales
4. A more equal Wales
5. A Wales of cohesive communities
6. A Wales of vibrant culture and thriving Welsh language
7. A globally responsible Wales

Public bodies have to contribute as much as they can to achieve the seven wellbeing goals by involving the local community in order to understand the issues it faces and not make quick fixes now that will have a negative effect on future generations. This is the 'sustainable development principle'.

### 6.1.2 Who does it affect?

There are 44 public bodies covered by the Act:

- Welsh ministers
- Local authorities
- Local health boards
- Public Health Wales NHS Trust
- Velindre NHS Trust
- National park authorities
- Fire and Rescue Authorities
- Natural Resources Wales
- The Higher Education Funding Council for Wales
- The Arts Council of Wales
- Sports Council of Wales
- National Museum of Wales

### 6.1.3 What does it mean for Disabled People?

Public bodies have to involve Disabled People in order to understand the issues Disabled People face so they can make better decisions.

Public bodies must ensure that the people they involve in making decisions reflect the population that they serve and include groups in decisions that will affect them. So, they must involve Disabled People in working towards all the well-being goals and in decisions that may change the services provided to them. They should also involve Disabled People in decisions about how assets are managed so that they can be used for the benefit of the Disabled community.

## 6.2 Well-being of Future Generations (Wales) Act 2015 (WFG Act) – Know Your Rights

6.2.1 [Section 6.3](#) is about the WFG Act. It looks in particular at what public bodies and public services boards have to do to ensure they're looking out for the interests of Disabled People.

### 6.2.2 Background of the Well-being of Future Generations (Wales) Act

6.2.3 The WFG Act was passed in 2015 and the well-being duty on public bodies and the Welsh Government started on 1st April 2016. Its purpose is to make public bodies and public services boards work together and consider seven wellbeing goals when they make decisions and think about the long-term as well as the short-term.

## 6.2.4 The Seven Wellbeing Goals

### 6.2.5 The seven wellbeing goals are:

#### 1. A prosperous Wales

An innovative, productive society that uses resources efficiently and develops a healthy economy and a well-educated population.

#### 2. A resilient Wales

A nation with a biodiverse natural environment and healthy, functioning ecosystems.

#### 3. A healthier Wales

A society that looks after people's mental and physical well-being, and where choices and behaviours that affect the future are understood.

#### 4. A more equal Wales

A society that helps people fulfil their potential no matter what their background or circumstances.

#### 5. A Wales of cohesive communities

A society with safe and well-connected communities that are viable.

#### 6. A Wales of vibrant culture and thriving Welsh language

A society that promotes and protects culture and heritage and which encourages people to participate in the arts and sports and recreation.

#### 7. A globally responsible Wales

A nation which takes into account whether its decisions about improving the well-being of Wales make a positive contribution to global well-being as well.

Public bodies have to consider all wellbeing goals when they plan and make decisions.

- 6.2.6 This means public bodies have to take all reasonable steps when making decisions to ensure that people's mental and physical health is protected. They must also ensure everybody has a chance to live in a safe community where they are connected to other people and that people can fulfil their potential, regardless of any impairment or health issues.

How all of the well-being goals impact Disabled People is explained below:

Well-being Goal	How it affects Disabled People
A Prosperous Wales	Disabled People often struggle to find work or continue in education. This goal will help people in Wales develop skills and give everybody the opportunity for education and employment.
A Resilient Wales	This goal means the biodiversity of Wales is looked after and that Wales is able to adapt to things like climate change. Having access to nature is very important for people's mental and physical health.
A Healthier Wales	This goal ensures people's mental and physical health is looked after.
A More Equal Wales	This goal aims to help people fulfil their potential – whether they are Disabled or not, everybody should be enabled to do their best.
A Wales of Cohesive Communities	Disabled People often have to fight for independent living and accessible housing. This goal makes sure people can live in communities that are safe, where they are connected to other people.
A Wales of vibrant culture and thriving Welsh language	British Sign Language, including Welsh regional signs are an important part of Wales' culture and language. This goal means they should be protected and promoted.
A Globally Responsible Wales	This goal means the well-being of people outside of Wales (including the global Disabled Community) is considered when decisions are made about the well-being of Wales.

### 6.2.7 Bodies covered by the WFG Act

#### 6.2.8 The public bodies covered by the Act are:

- Local authorities
- Local health boards
- Public Health Wales NHS Trust
- Velindre NHS Trust
- National park authorities
- Fire and Rescue Authorities
- Natural Resources Wales
- the Higher Education Funding Council for Wales
- the Arts Council of Wales
- the Sports Council for Wales (Sport Wales)
- the National Library of Wales
- the National Museum of Wales
- the Welsh ministers.

#### 6.2.9 Public services boards (PSBs) are made up of representatives from the local council, health board, fire and rescue services, and national resources Wales. They must assess the state of well-being in the area and create a local well-being plan to improve the economic, social, environmental and cultural well-being of its area.

Under [section 40 of the WFG Act](#), local community councils who have had a gross income or gross expenditure of at least £200,000 for the past three financial years (before the local well-being plan in its area was published) must take all reasonable steps towards meeting the local objectives set by public services boards.

### 6.2.10 Well-being Duty

#### 6.2.11 The Act places a duty that public bodies will be expected to carry out. A duty means they have to do this by law. The well-being duty says that each public body must carry out sustainable development. This must include setting 'well-being objectives' and taking all reasonable steps to meet those objectives they have set.

This means that every public body listed in the Act must work to improve the social, economic, environmental, and culture well-being of Wales. To do this they must set and publish well-being objectives to show how they will work and take action to make sure they meet the objectives.



6.2.12 Public bodies have to publish a wellbeing statement which explains what their well-being objectives are and why they feel those objectives will help them contribute as much as they can to the well-being goals. They must also explain how they have applied the sustainable development principle.

Each PSB must prepare and publish a plan setting out its objectives and the steps it will take to meet them (this is called a local well-being plan).

6.2.13 Some community and town councils have a duty to do what they can to meet their local wellbeing objectives. These councils must publish a report every year detailing their progress in meeting the objectives contained in the public services board's local well-being plan.

This is discussed further in [section 6.3.7](#).

## 6.3 Well-being of Future Generations (Wales) Act 2015 (WFG Act) – Use Your Rights

6.3.1 This section is about what public bodies have to do to make sure they are working towards the wellbeing goals. It looks in particular at how they must take into account Disabled People's (and other minority groups') requirements when they make decisions and plan for the future.

### 6.3.2 Involving Disabled People as a Community

6.3.3 Public bodies have to act in accordance with the 'sustainable development principle'. This means working in a way that involves the local community in order to understand the issues it faces and doesn't make quick-fixes now that will have a negative effect on the needs of future generations.

The sustainable development principle has ‘five ways of working’:

1. **Long Term** – Looking to the long-term so that we don’t compromise the ability of future generations to meet their own needs
2. **Integration** – Taking an integrated approach so that public bodies look at all the wellbeing goals in deciding on their well-being objectives
3. **Involvement** – Involving a diversity of the population in the decisions that affect them
4. **Collaboration** – Working with others in a collaborative way to find shared sustainable solutions
5. **Prevention** – Understanding the root causes of issues to prevent them from occurring

This means that public bodies have to involve Disabled People in order to understand the issues Disabled People face so they can make good decisions to prevent the issues that Disabled People face and enable them to fulfil their potential.

- 6.3.4 Public bodies must ensure that the people they involve reflect the population that they serve. This includes involving the people and communities whose well-being they are seeking to improve and they must consider the needs of both current and future generations.

So they have to involve Disabled People in working towards the well-being goals and in decisions that may change the services provided to them. They should also involve Disabled People in decisions about how assets are managed so that they can be used for the benefit of the Disabled community.

6.3.5 They have to consider the views and requirements of Disabled People at all stages of decision making, not just at the end after they have already set their well-being objectives. The WFG Act encourages public bodies to seek out representative groups that can advise them about the community's needs.

Disabled People's Organisations (DPOs) can help them decide what changes are important. They can find out the views of Disabled People about the decisions the public bodies are making and use this information to advise the public bodies how they can achieve their well-being goals for a healthier and more equal Wales.

## 6.3.6 Being accountable

6.3.7 Under the WFG Act public bodies have to tell people what they are going to do to contribute as much as they can towards the wellbeing goals and show the progress they have made in achieving them. They are required to do this by publishing a well-being statement that explains why they made the decisions they did and what difference it has made.

They are also required to publish a report every year showing the progress they have made in meeting their objectives.

The well-being statement and annual report could be used by Disabled People to show that a public body has not met their objectives, or has not properly considered the requirements of Disabled People.

6.3.8 The WFG Act introduces a new role called the Future Generations Commissioner. The general duty of the Future Generations Commissioner for Wales is to promote the sustainable development principle (the five ways of working), in particular to act as a guardian of the ability of future generations to meet their needs, and encourage public bodies to take greater account of the long-term impact of the things that they do. To do this the Commissioner can monitor and assess the extent to which well-being objectives set by public bodies are being met. The Commissioner can conduct a review and make recommendations which public bodies must take all reasonable steps to follow.

6.3.9 This section of the pack has looked at:

- How the wellbeing goals affect Disabled People and
- How public bodies have to consider Disabled People's input

## 6.4 Well-being of Future Generations (Wales) Act 2015 (WFG Act) – Helpful Resources

6.4.1 The Welsh Government's short guide to the WFG Act that covers 'The Essentials':

<https://www.futuregenerations.wales/wp-content/uploads/2017/02/150623-guide-to-the-fg-act-en.pdf>

6.4.2 The Welsh Government's guide to the WFG Act for young people:

<https://www.futuregenerations.wales/wp-content/uploads/2017/01/160401-wfg-accessible-guide-for-young-people-en.pdf>

6.4.3 The Welsh Government's guide to the WFG Act that is an 'Easy Read' version:

<https://gov.wales/sites/default/files/publications/2019-06/easy-read-a-guide-to-the-wellbeing-of-future-generations-act.pdf>

6.4.4 Wales and the Sustainable Development Goals:

<https://gov.wales/uk-voluntary-national-review-welsh-supplementary-report-2019>

6.4.5 The Future Generations Commissioner for Wales :

<https://www.futuregenerations.wales/>

6.4.6 Future Generations Commissioner for Wales – Journey Checker:

<https://www.futuregenerations.wales/journey-checker-involvement/>





## 7 Social Services and Well-being Act (SSWA)

## **7.1 The Social Services and Well-being (Wales) Act 2014 (SSWA) – The Basics**

### **7.1.1 What is it?**

SSWA aims to transform the social services in Wales. It gives a legal framework for improving the wellbeing of people who require care and support, and carers who require support.

It is supported by ‘Codes of Practice’ and ‘Regulations’, which give more detail about how the rules work in Wales and have been updated since the Act was introduced.

The Act has four main principles:

1. Voice and control – putting the person who requires support at the centre of their care and giving them a voice and control over their wellbeing.
2. Prevention and early intervention – increasing services in communities so they can be solved before they become emergencies

3. Wellbeing – supporting people so that they are happy, healthy and comfortable with their life and what they do.
4. Co-production – encouraging people who require support to be more involved in how services are designed and delivered.

### **7.1.2 Who does it affect?**

The Act covers all aspects of social services and aims to make sure that anybody who requires care and support (including carers) receive the help they require. It focuses on what local authorities have to do to achieve this but also includes local health boards.

### **7.1.3 What does it mean for Disabled People?**

Regional partnership boards (which make decisions about needs assessments and local authorities plans) must include representatives for the interests of people who require care and support, care providers, and third sector organisations in the area.

Local authorities must carry out assessments to find out if a person requires support and what those requirements are. When doing this they must consider the person's views, wishes and feelings, as well as their culture and beliefs.

The Regulations for the Act lay out certain 'eligibility criteria' that mean a person automatically qualifies for care and support.

The Act introduces new rules about charging meaning that local authorities can charge people for the care and support they received, based on a financial assessment.

It also gives people the right to an advocate, who can help them overcome barriers that stop them from being fully involved in planning their care.

## **7.2 The Social Services and Well-being (Wales) Act 2014 (SSWA) – Know Your Rights**

7.2.1 [Section 7.3](#) is about the Social Services and Well-being Act, 2014 (SSWA). It looks in particular at how the SSWA can be used by Disabled People.

### **7.2.2 Background to the SSWA**

7.2.3 The Social Services and Well-being Act, 2014 (SSWA) was enacted in April 2016. Its goal is to modernise and bring together other social services laws.

It aims to change the social services sector so that people have more control over what support they require and can make decisions about their care as an equal partner. It also aims to ensure that carers have an equal right to assessment for support.

The Act aims to improve safeguarding and ensure that everyone has access to information and advice. It is designed to meet care and support requirements in a way that prevents issues rather than dealing with them after they happen.

#### 7.2.4 The Act

7.2.5 The Act has four main principles:

1. **Voice and control** – this is about putting the person who requires care and support and their requirements at the centre of their care. It also means giving them a voice in and control over reaching their wellbeing.
2. **Prevention and early intervention** – this is about increasing services within the community so that issues can be solved before they become emergencies.
3. **Wellbeing** – this is about supporting people to achieve their own wellbeing and measuring the success of care and support.

4. **Co-production** – this is about encouraging people who require care and support to become more involved in the design and delivery of services.

7.2.6 “Wellbeing” is in relation to:

- physical and mental health and emotional wellbeing;
- protection from abuse and neglect;
- education, training and recreation;
- domestic, family and personal relationships;
- contribution made to society;
- securing rights and entitlements;
- social and economic wellbeing;
- suitability of living accommodation.

In relation to a child, “wellbeing” also includes physical, intellectual, emotional, social and behavioural development. In relation to an adult, “wellbeing” also includes control over day-to-day life and participation in work.

7.2.7 The SSWA is made up of 11 parts:

1. Introduction
2. General Functions
3. Assessing the Needs of Individuals
4. Meeting Needs
5. Charging and Financial Assessment
6. Looked After and Accommodated Children
7. Safeguarding
8. Social Services Functions
9. Co-operation and Partnership
10. Complaints, Representations and Advocacy
11. Miscellaneous and General

7.2.8 The SSWA is supported by 'Regulations' and 'Codes of Practice'.

Regulations are legislation agreed by Welsh ministers, which should be used where more detail is needed in implementing an act.

Codes of practice provide guidance (which is backed by the law) to help people and organisations work within the new framework created by an act.

## 7.2.9 Involving Disabled People

7.2.10 Involving people in the assessment and delivery of their own care so that they have more control is an essential part of the SSWA.

When assessing or meeting needs, local authorities (and individuals who are involved in the process) must consider the individual's views, wishes, and feelings.

They must respect the dignity of the individual and must consider the person's characteristics, culture, and belief. They must give the individual appropriate support to enable them to participate in decisions that affect them. They must also begin by assuming that this (adult) individual is the best-placed person to judge their own wellbeing and promote their independence where possible.



7.2.11 Regional partnership boards (RPBs) are made up of a local authorities and local health boards. They must work together with local authorities to carry out Population Needs Assessments. This is an assessment of what requirements there are for care and support and the services they must have to provide to meet those requirements. RPBs must respond to these assessments and implement plans for local authorities.

People who use services must be actively involved and engaged in the work of the regional partnership boards. These boards should be able to demonstrate how they have engaged with citizens and carers at all levels including assessing need, strategic planning, service design and delivery.

## 7.2.12 Assessing needs

7.2.13 The local authority may carry out assessments to determine what a person's requirements for care and support are. Under the SSWA the person is considered an equal partner in this assessment (and the delivery of care) and the person best suited to know what their own care requirements are.

Under the SSWA local authorities also must provide for carers who require support.

Where a person and their carer both require care and support, local authorities can combine the needs assessment for both people, and conduct the assessment at the same time if appropriate.

7.2.14 A disabled child is presumed to require care and support in addition to (or instead of) the care and support provided by their family.

7.2.15 When a person requires support in order to be involved in the planning of their care and support (and it is not possible or appropriate to get that support from family or friends) local authorities must arrange an independent advocate to help the individual be involved.

[Section 7.2.23](#) explains advocacy in more detail.

#### **7.2.16 Providing care and support**

7.2.17 Intervening early on and preventing requirements increasing is an essential part of the SSWA. So under this Act local authorities must provide or arrange for the provision of services that will prevent or delay people's requirement for care and support. They must also enable people to live their lives as independently as possible.

7.2.18 Individuals, their families and carers may require care or support from more than one professional or organisation. Where this is the case the care and support should be effectively co-ordinated and delivered to meet their specific requirements.

In relation to people requiring care and support this should mean their care is planned by them with people working together to understand them, their family, and carer(s). Their care should give them control and bring together services to achieve the outcomes important to person receiving care.

7.2.19 A local authority must meet an adult's requirements for care and support if the person is a resident in the area (or has no settled residence but is within the authority's area).

A person may be charged for the care and support a local authority provides them. Unless an authority is charging a flat-rate charge for services, they must carry out a financial assessment and determine what amount is reasonably practical for the person to pay.

Local authorities must meet a person's requirements if there is no charge for the care and support required or if the adult's financial resources are below the financial limit, or if the person lacks capacity to arrange care and support and there's no other person authorised to do so.

A local authority must also meet the person's requirements if the adult's financial resources are above the limit, but they've asked the authority to meet their requirements. In this case, it's likely the person would be charged for the services provided by the local authority.

The Eligibility Criteria are explained in [section 7.3.20](#) in more detail.

- 7.2.20 If a service provider that provides care and support for a person in a local authority's area is unable to continue providing care because of a business failure, the local authority must provide for that person's needs as long as it considers necessary (beyond what the local authority is already required to do).

- 7.2.21 Local authorities cannot meet care and support requirements (or secure preventative services) which are required to be provided under a health law or other health legislation. They also cannot meet needs by providing nursing care by a registered nurse, unless it's been agreed with the local health board.

- 7.2.22 If a needs assessment shows a person requires care and support, the local authority must determine whether their requirements meet the eligibility criteria, and if they don't the local authority must determine whether it is necessary to meet their requirements in order to protect them from a risk of abuse or neglect.

They must also consider whether the person would benefit from preventative services or information, advice and assistance, or anything else that may be available in the community.

The Eligibility Criteria are explained in [section 7.3.16](#) in more detail.

### 7.2.23 Advocacy and support

7.2.24 An Adult Protection and Support Order allows an authorised officer to enter a premises where they have reasonable grounds to suspect an adult may be at risk, to speak privately with the adult concerned, and assess whether they are making decisions freely and if they are at risk.

An 'authorised officer' is an officer of the local authority who has completed the appropriate training.

7.2.25 Advocacy supports people who have difficulty communicating their interests or representing themselves. It can be provided informally through peers, family and friends or through volunteers. However, sometimes that support is not available and formal or independent professional advocacy is required.

Advocates assist the person to:

- understand the relevant processes
- communicate their views
- understand how their needs can be met by the local authority
- make decisions about their care and support arrangements
- understand their rights
- challenge a decision or process

7.2.26 Local authorities must also consider a person's requirements for advocacy support when they are assessing needs, meeting needs, charging for services and in exercising their safeguarding duties. It is very important for local authorities to consider advocacy requirements in safeguarding enquiries. This is because individuals who have been abused or neglected are often frightened, embarrassed, and in need of someone to help them express their views.

7.2.27 When the person supported by an advocate may be a victim of abuse or neglect, the advocate should also enable them to:

- Decide what outcomes or changes they want
- Understand what behaviours of others are abusive or neglectful
- Understand which actions of their own may expose them to avoidable abuse or neglect
- Understand what actions that they can take to safeguard themselves
- Understand what advice and help they can expect from others, including the criminal justice system;
- Understand what parts of the process are completely or partially within their control
- Explain what help they want to avoid reoccurrence and recover from the experience

7.2.28 Any individual can make the choice to invite any advocate to support them in expressing their views, wishes and feelings.

## 7.3 The Social Services and Well-being (Wales) Act 2014 (SSWA) – Use Your Rights

7.3.1 This section is about what kind of care Disabled People are entitled to under the Social Services and Well-being Act, 2014 (SSWA). It looks in particular at how the SSWA can be used by Disabled People, and what local authorities are obligated to do.

### 7.3.2 Involving Disabled People

7.3.3 Regional partnership boards must actively involve and engage service users in their work and the board must include, among other people and representatives:

- At least two people who represent the interests of third sector organisations in the area
- At least one person who represents the interests of care providers in the area
- At least one person who represents the interests of people who require care and support
- At least one person to represent the interests of carers



- 7.3.4 In assessing people's needs, local authorities must work with people to identify what matters to them and must consider the personal outcomes that individuals wish to achieve. They must also consider the resources available, and how the local authority might support the individual to achieve those needs. They must work with that individual to agree realistic, observable, and achievable milestones to be reached.

Where possible, local authorities should also involve the person's carer in assessing the person's requirements. If the person being assessed is a carer who requires support, the local authority should involve the person they care for, where possible. If the person being assessed is a child, the local authority must also include any person with parental responsibility for the child.

- 7.3.5 Local authorities must provide information and advice to people so that they can determine the outcomes they want to achieve and make informed decisions about how to manage their wellbeing.

Information must be made available about the types of care and support available in the area, how to access it and how to raise concerns about the wellbeing of a person who might require care and support. It must also be provided in a way that is accessible to the person who require that information.

#### 7.3.6 **Assessments**

- 7.3.7 Wherever it appears to a local authority that a person may require care or support, they must assess whether that person does require care or support and find out what those requirements are.

- 7.3.8 Local authorities must also assess a person's needs if they are carers who may require support. In this case, the local authority must also consider whether they participate or want to participate in work, education, training, or leisure activity.

7.3.9 Local authorities must ensure anyone carrying out an assessment has the skills, knowledge and competence to do so, and has received training to do so. They also must consider whether the nature of the person's requirements calls for the involvement of a person who has specialist skills, knowledge, or expertise.

7.3.10 Local authorities must offer to give a copy of their written assessment to the person assessed or a person acting on their behalf and must review assessments if it appears there has been significant change in the person's circumstances or personal outcomes.

Any person who has been assessed (or who is authorised to act on behalf of a person being assessed) can request a review of an assessment. The local authority must comply with that request if they are satisfied that there has been a significant change in circumstances or personal outcomes.

### 7.3.11 Providing care and support / meeting needs

7.3.12 The provisions that local authorities make to prevent people's need for care and help them live independently must also minimise the effect of impairment on Disabled People. They must also promote the upbringing of children by their families (where this doesn't negatively impact the child's wellbeing).

Previously, under **section 47 of the National Assistance Act 1948**, local authorities could apply for a court order to remove people who require care and attention from home to hospitals or other places. Because of the SSWA this law no longer applies in Wales, so local authorities do not have this power any longer.

This gives Disabled People more power to choose where they want to receive care and stay at home if they wish. As long as a disabled child's wellbeing is not negatively impacted by staying at home, a family can choose for them to stay at home.

7.3.13 Local authorities must provide care and support if a person's need for care and support cannot be met alone or with the support of others around them who are willing to help, or with the assistance of services to which the person already has access.

If a person is able to meet their needs alone or with the assistance of others, but doing so causes them significant pain, anxiety or distress, they are considered unable to meet their needs alone. This also applies if meeting their needs alone is likely to endanger anyone's health or takes them significantly longer than would normally be expected.

The local authority must also provide care and support if the person is unlikely to achieve one or more of their personal outcomes without the provisions of the local authority, or without a direct payment from the authority.

7.3.14 Sometimes the local authority may have to meet a person's needs by providing a specific type of accommodation, and that person may have a preference for a particular place. If this is the case, the local authority must arrange or provide for the person to be cared for in that accommodation, but the person may have to pay any additional cost.

If a person is being cared for in accommodation or hospital and their property may be damaged because they're unable to protect it, the local authority must take reasonable steps to prevent damage.

7.3.15 Local authorities may be required to make direct payments to someone who requires care and support in order to meet their needs. **Section 49** and **Section 51** of the Act explain in detail how this should happen.

Local authorities can only provide direct payments if the person's requirements are urgent and it is not reasonable to meet them in any other way. However, any element of wellbeing that cannot be achieved

without support produces an urgent situation because that individual is not able to achieve their wellbeing outcomes. So any situation where a Disabled Person cannot meet their needs without support can access direct payments to enable them to get that support.

When local authorities provide direct payments they must ensure the person receiving them can manage their payments and consent to them. If the person can't someone who is authorized to act on their behalf must consent to the payments and manage them. This could be a family member or friend, or a service provided by the local authority.

If a local authority decides the most appropriate way to meet a person's needs is through direct payments, they must tell the person why and give them information about what support is available to help them manage their direct payments.

### 7.3.16 Eligibility Criteria

7.3.17 Regulations in Wales determine that an adult meets the eligibility criteria if they require care and support because of their physical or mental ill-health, age, impairment, dependence on alcohol or drugs or other similar circumstances.

It also applies to anyone whose requirement for care and support relates to any of the following:

- Their ability to carry out self-care or domestic routines
- Their ability to communicate
- Protection from abuse or neglect
- Involvement in work, education, learning, or in leisure activities
- Maintenance or development of family or other significant personal relationships
- Development and maintenance of social relationships and involvement in the community
- Fulfilment of caring responsibilities for a child

7.3.18 A carer meets the eligibility criteria if their requirement for support (which meets one or more of the criteria above) arises from caring for an adult who meets the criteria above, or a disabled child.

7.3.19 The same criteria apply to children who require care and support, but also include where a child's requirements impact their ability to achieve developmental goals, and if their needs cannot be met alone or by their parents and community.

#### 7.3.20 **Charges and financial assessment**

7.3.21 Welsh regulations say that local authorities cannot impose a charge for care and support to meet the needs of a child, or for anyone receiving support as part of a package of after-care services in accordance with the Mental Health Act (1983).

Charges also cannot be imposed for care/support where an authority provides transport to a day service which is necessary to meet the needs of the person, and they cannot charge for advocacy services.

7.3.22 A local authority cannot charge more than £100 per week for any care and support that does not involve accommodation in a care home (but this does not include any flat-rate charges).

Welsh regulations set the relevant capital limit for non-residential care at £24,000. 'Capital' is all the money and assets that somebody owns.

This means that for non-residential care, local authorities cannot charge or collect repayments for care and support services or provisions from anyone whose capital is less than £24,000. For residential care, the 'relevant capital limit' is £50,000, and the local authority cannot charge an amount that would decrease the person's income to less than £29.50 per week.<sup>4</sup>

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<sup>4</sup> These figures are correct for the financial year 2020/21, but they will change over time. Wales regulations have updated the figures several times since the Act was introduced.



### 7.3.23 Advocacy

7.3.24 If a person requires an advocate but no appropriate individual is available, local authorities must arrange for provision of an independent professional advocate.

7.3.25 A person is considered to require an advocate when they can only overcome the barriers that prevent them participating fully in all aspects of their care and support with assistance. (Aspects of their care and support include the assessment, care & support planning, the review and the safeguarding process). Where these criteria are met, the local authority cannot charge the individual for the advocacy.

Barriers that might prevent someone from participating fully include issues or situations that impair someone's ability to understand relevant information, retain information, use or weigh information and communicate their views, wishes and feelings.

An appropriate advocate is someone who the individual is happy to have supporting them and who is likely to be able and available to adequately support the individual's involvement. The advocate also cannot be someone who has been implicated in an inquiry into abuse or neglect. Local authorities should also be aware of any conflicts of interest that may exist between the individual and their advocate.

7.3.26 If a person and the local authority cannot agree on the person's advocacy requirements, the person must be informed about their rights to access the complaints procedure and be supported through the complaints process.

7.3.27 Advocacy services that are used by local authorities where there is a requirement for independent advocacy must be well-publicised and easy to use. They must work exclusively for the individual and operate a high level of confidentiality. Wherever possible they should be funded and managed in a way that ensures independence from the commissioning organisation (the local authority).

- 7.3.28 If a child or young person intends to make representations (making a formal complaint) against a local authority, that authority must provide them with information about advocacy services and offer them help in obtaining an advocate.

An advocate for a child or young person cannot be a person who may be the subject of the complaint or manage the person or service who is the subject of the complaint.

Children and young people should be helped to understand the differences between the types of support available and make an informed choice between informal advocacy (such as by a relative, carer or teacher) and professional independent advocacy.

### 7.3.29 **Reporting and accountability**

- 7.3.30 Local authorities must have due regard for the UNCRDP when exercising social service functions.

- 7.3.31 When a local authority is required to meet someone's requirements for care and support, they have to prepare and maintain a care and support plan. The support plan must be prepared by someone who has the skills and appropriate training.

It must contain a description of the person's eligible requirements, their personal outcomes, and the actions the local authority is going to take to help them achieve their personal outcomes and meet their requirements. It must also make arrangements to understand whether the personal outcomes have been achieved. It must also make arrangements for reviewing the plan.

The plan must be reviewed if it appears the persons requirements are not being met. A person can request a review, and the local authority must comply if they are satisfied the plan is not meeting the person's requirements. Local authorities must give a copy of the plan to the person it concerns.

If someone with a care and support plan moves, the local authority has to give a copy of the plan to the new local authority together with information relating to their care. The new authority has to assess the person and determine if their requirements have changed because of the move.

7.3.32 Local authorities must appoint a complaints officer whose job it is to manage the handling and consideration of complaints and representations. The complaints officer must ensure that children are aware of and understand their role. They should consult with children and young people when they express an intention to make a complaint. They should help the children and young people understand what options are available, how the process works plus the options for advocacy and how that works.

Local authorities must respond in writing to any representations made by an advocate.

7.3.33 This section of the pack has looked at:

- How local authorities must involve Disabled People in the planning and delivery of their care and
- Who is entitled to care and support under the SSWA

## 7.4 The Social Services and Well-Being (Wales) Act 2014 (SSWA) – Helpful Resources

- 7.4.1 The Welsh Government's short guide to SSWA that covers 'The Essentials':

<https://gov.wales/sites/default/files/publications/2019-05/social-services-and-well-being-wales-act-2014-the-essentials.pdf>

- 7.4.2 The Welsh Government 'Easy Read' version of SSWA:

<https://gov.wales/sites/default/files/publications/2019-06/social-services-and-well-being-wales-act-easy-read.pdf>

- 7.4.3 The Information and Learning Hub section on SSWA:

<https://socialcare.wales/hub/sswbact>

- 7.4.4 Social Care Wales video guide – 'What Does The Act Mean For Me?':

<https://www.youtube.com/watch?v=-Ci5WByP6Gw>

- 7.4.5 Social Care Wales guide to the SSWA and workbook:

[https://socialcare.wales/cms\\_assets/hub-downloads/Workbook-What-does-the-Act-mean-for-me.pdf](https://socialcare.wales/cms_assets/hub-downloads/Workbook-What-does-the-Act-mean-for-me.pdf)



## 8 Additional Learning Needs Education Tribunal (Wales) Act 2018 (ALNET)



## **8.1 Additional Learning Needs Education Tribunal (Wales) Act 2018 (ALNET) – The Basics**

### **8.1.1 What is it?**

ALNET is going to replace the special educational needs (SEN) system and the learning difficulties and/or disabilities (LDD) system. The new system that will replace them is called Additional Learning Needs (ALN) and will be gradually phased in from 2021–2024.

It aims to create a simpler system that helps schools and further education institutions to work together with children, young people, and their parents so that they can solve any disagreements and achieve better outcomes.

### **8.1.2 Who does it affect?**

The new ALN system applies to anyone who is aged 0–25 and is receiving education or training.

Local authorities, schools, and further education institutions all have certain duties under the act.

### **8.1.3 What does it mean for Disabled People?**

Children of compulsory school age are considered to have ALN if they have significantly more difficulty in learning than their peers, or if they have an impairment that makes it difficult for them to use educational facilities that are provided for their peers.

When a local authority or school thinks a child or young person may have ALN they have to do an assessment and create an Individual Development Plan (IDP). IDPs detail what requirements the person has and how to accommodate them.

Children, young people, and parents can also take disputes to the Education Tribunal, where they can contest the decisions or assessments made by a school or local authority. Children, young people and their families have the right to independent advocates, and children who lack capacity, they have the right to a 'case friend' to represent them.

## 8.2 Additional Learning Needs Education Tribunal (Wales) Act 2018 (ALNET) – Know Your Rights

8.2.1 [Section 8.3](#) of the pack is about the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (ALNET). It looks in particular at what schools, further education institutions, and local authorities have to do for children and young people with ALN.

### 8.2.2 Background to ALNET

8.2.3 The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (ALNET) became law in January 2018. It replaces existing law about Special Educational Needs (SEN) and the assessment of children and young people with Learning Difficulties and/or Disabilities in post-16 education or training.

SEN will gradually be phased out and replaced by ALN, beginning in September 2021. ALN should have fully replaced the existing system by the end of 2024. (More information about the exact timeline for this phasing-out can be found here: <https://gov.wales/sites/default/files/publications/2020-03/additional-learning-needs-aln-transformation-programme-v3.pdf>)

ALNET will support learners between the ages 0-25 years. It seeks to improve collaboration between local authorities and health boards and establish a fairer, more transparent system.

A first draft of the Additional Learning Needs Code ('The Code') was produced in 2018 and a public consultation was undertaken. Following the consultation, the Code was amended and put before the Senedd for their approval in March 2021.

### 8.2.4 Additional Learning Needs

8.2.5 The Act defines ALN as having a learning difficulty or disability (whether this arises from a medical condition or not) which calls for additional learning provision.

A child of compulsory school age is considered to have ALN if they have significantly more difficulty in learning than the majority of others the same age, or if they have an impairment that makes it difficult for them to use educational facilities that are provided for others of the same age in mainstream schools or institutions.

A person does not have a learning difficulty or disability solely because the language (or form of language) in which they are taught is different from the language (or form of language) which they use at home.

- 8.2.6 Local authorities must ensure people are provided with information about ALN and the provisions that are available.
- 8.2.7 The views, wishes and feelings of the young person or child and the child's parents must be considered. It's also important for them to participate as fully as possible in decisions that relate to them, so schools and local authorities must provide them with information and support to help them achieve this.

## **8.2.8 Independent Development Plans (IDPs)**

- 8.2.9 Individual Development Plans (IDPs) will replace the current Statements of Special Educational Needs and Individual Education Plans.

An IDP is a document that contains a description of a person's additional learning needs and a description of the provision that their learning difficulties or impairment calls for.

- 8.2.10 If a school, a further education institution, or a local authority believes a child or young person may have ALN, they must decide whether or not they do. They do not have to do this if the person already has an IDP or they have already been assessed and the school or local authority is satisfied that their requirements have not changed.

If it appears a child looked after by a local authority may have ALN, the local authority responsible for them must be informed.

8.2.11 If the school or further education institution decides that the person does not have ALN, they must inform the person and tell them the reasons why. If the person is a child, they must also inform the child's parents.

If a school or further education institution decides that the person does have ALN, they must prepare and maintain an IDP, unless the person's needs call for a learning provision that is unreasonable for the school to supply.

8.2.12 If a local authority decides that a person has ALN and prepares an IDP, they can direct the school or educational institution the person attends to maintain the IDP.

They must consider whether learning provisions should be provided in Welsh and take all reasonable steps to supply provisions in Welsh if this is the case.

8.2.13 Schools, further education institutions, or local authorities can refer a child or young person to an NHS body to consider if there is any relevant treatment that is likely to benefit them. They can only make this referral if the young person or child and their parents have been informed and have had an opportunity to discuss it.

Whatever the outcome of that referral, the NHS body must inform the school or the local authority who made the referral, and if the NHS body asks the school or local authority to review the plan, they must comply.

8.2.14 Responsibility for educational institutions to maintain IDPs ceases at the end of the academic year during which the person turns 25.

#### 8.2.15 **ALN provision**

8.2.16 Children who are already engaged with the SEN system will be gradually moved over to the new ALN, but children with newly identified ALN who were not previously under SEN system will go directly to the ALN system.

8.2.17 Children have the right, wherever it is practical, to have their needs met at a mainstream school if they wish. Unless a mainstream school is unable to provide for a child or young person's needs, or unless the parents want their child to be educated at another institution, local authorities must ensure a child with ALN is educated at a mainstream school wherever possible.

Those making ALN provisions at a mainstream school must ensure that, as far as it is practical, a child with ALN engages in activities of the school together with children who do not have ALN.

8.2.18 Sometimes a person's ALN requirements are beyond what their mainstream school can offer.

If a person's requirements cannot be met unless a local authority secures them a place at a particular institution, the local authority must include those provisions in the IDP.

If a local authority thinks a child's needs can only be met at a particular school, the local authority must consult the school and can put it in the IDP that the child must be provided for by that school. If they do this, the school must admit the child.

8.2.19 If a health body deems a child under compulsory school age to have ALN, it must inform the parents and local authority. The local authority must signpost parents to voluntary organisations that may be able to help, where they exist.



### **8.2.20 The Education Tribunal for Wales**

8.2.21 Local authorities must aim to avoid and resolve disagreements between education bodies and children or young people with ALN (and in the case of a child or young person under 18, their parents too). But sometimes things can't be resolved and they can be taken to the Education Tribunal for Wales.

8.2.22 The Education Tribunal for Wales replaces the previous Special Educational Needs Tribunal for Wales. It is a body that has the power to settle disputes and make decisions regarding schools, local authorities, and people with ALN.

The Education Tribunal has the power to order that a person does or does not have ALN, and order educational institutions or local authorities to perform their duties accordingly (such as maintaining IDPs, or providing additional learning provision etc). They may also request evidence from NHS bodies.

## **8.3 Additional Learning Needs Education Tribunal (Wales) Act 2018 (ALNET) – Use Your Rights**

8.3.1 This section is about the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (ALNET). It looks in particular at what schools, further education institutions, and local authorities must do and the ways young people, children and their parents can challenge decisions.

8.3.2 Local authorities and NHS bodies must have regard for the UNCRC and the UNCRDP.

### **8.3.3 IDPs and ALN provision**

8.3.4 If a person is enrolled at more than one educational institution, the local authority must be responsible for deciding if the person has ALN and must make and maintain an IDP accordingly.

Local authorities must keep the arrangements made by schools under review.

- 8.3.5 A copy of the IDP must be given to the young person or child, and if the person is under 18, a copy must also be given to their parents.

IDPs must be reviewed every 12 months by the educational institution or local authority that maintains it. Whatever the outcome of that review, they must inform the person the IDP is about (and their parents if that person is under 18). If they change the plan because of the review, a copy of the revised plan must also be provided.

- 8.3.6 If a child transfers to a new school and they had an IDP maintained at their previous school immediately before starting at the new school, the new school must maintain the IDP. The same applies if a child becomes the responsibility of a local authority and their previous local authority maintained an IDP for them.

Local authorities can sometimes secure provisions for children with ALN at independent schools but they can only do this if the school is included in the register of independent schools in Wales and the local authority

is satisfied that the school can make the ALN provisions described in the IDP.

- 8.3.7 Home authorities may also assess whether a detained person has ALN and develop an IDP to be implemented and maintained when they are released. A 'home authority' is the local authority where the detained person usually lives.

- 8.3.8 Schools and further education institutions must take all reasonable steps to ensure that a person's ALN provision called for by their requirements are met.

Every school with students of compulsory school age must designate one staff member to be the ALN coordinator. Health boards must designate an education clinical lead officer, who is responsible for coordinating the Board's functions in relation to children and young people with ALN. Nurseries must have an 'early years ALN lead officer'.

8.3.9 Neither schools nor local authorities can make the young person, child, or their parents pay for any provision they provide in relation to a child or young person's ALN.

#### **8.3.10 Disputes and the Education Tribunal**

8.3.11 Young people, children or their parents can request that IDPs be revised. The local authority must decide whether or not to revise the plan then inform the school and young person or the child and their parents of the decision they've made and reasons for that decision.

Young people, children or parents can also request that a local authority takes over an IDP from a school, and schools can request this too. If this happens, the local authority must inform the person concerned (and their parent if they're a child) and the school.

If the local authority decides to take over the IDP, the school is no longer responsible for maintaining it.

8.3.12 If a school thinks a child no longer has ALN and ceases the IDP, the child or their parents can request that the local authority decide whether or not this is an appropriate decision.

8.3.13 A young person, child, or their parents can appeal to the Education Tribunal for Wales against an educational institution or local authority about the decisions those bodies have made regarding the assessment of a person's needs, IDPs, or additional learning provisions.

8.3.14 Local authorities must secure provision of an independent professional advocate for children and young people who request an advocate if they are making or considering making an appeal to the Education Tribunal for Wales, or having a disagreement with an educational institution.

#### **8.3.15 Capacity**

8.3.16 Some children or young people may be determined to lack capacity. This means they are unable to fully understand the information given to them or make decisions based off that information.

8.3.17 If a school determines whether or not a child has capacity and the parents disagree with that decision, the local authority must make the determination.

A child or child's parents can apply to the Education Tribunal for a declaration about whether the child does or does not have capacity to understand information given to them and understand how to exercise their rights.

8.3.18 If a school, local authority, or NHS body considers that a child does not have the capacity to understand the subject matter, they do not have to give a copy of the IDP to the child as they would normally do. They also do not have to review the IDP if the child has requested it.

However, they do have to do these things if the local authority or Education Tribunal has determined that the child does have capacity, or if a 'case friend' has been appointed by the Education Tribunal.

8.3.19 A 'case friend' represents and supports a child who lacks capacity and makes decisions and acts on behalf of the child. The Education Tribunal may appoint someone to be a 'case friend' to a child who lacks capacity.

Case friends must act fairly and competently and they must not have any interests that conflict with their duty to the child. They must ensure that all the decisions they make are for the benefit of the child and, as far as possible, take in to account the child's views.

8.3.20 This section of the pack has looked at:

- What schools, further education institutions, and local authorities have to do under ALNET
- How to take a disagreement to the Education Tribunal

## 8.4 Additional Learning Needs Education Tribunal (ALNET) – Helpful Resources

- 8.4.1 The Welsh Government's answer to 'Frequently Asked Questions' about ALNET:

[https://gov.wales/sites/default/files/publications/2019-02/aln-frequently-asked-questions-2\\_0.pdf](https://gov.wales/sites/default/files/publications/2019-02/aln-frequently-asked-questions-2_0.pdf)

- 8.4.2 The Welsh Government's timeline of implementation of the ALN system:

<https://gov.wales/sites/default/files/publications/2020-03/additional-learning-needs-aln-transformation-programme-v3.pdf>

- 8.4.3 The Welsh Government's factsheet for children and young people and their parents or carers:

<https://gov.wales/sites/default/files/publications/2018-06/aln-factsheet-how-will-the-act-affect-children-young-people-and-parents-carers.pdf>

- 8.4.4 The Welsh Government 'Easy Read' version of ALNET:

<https://gov.wales/sites/default/files/publications/2018-10/helping-children-and-young-people-who-need-extra-support-to-learn-children-and-young-people-with-additional-learning-needs.pdf>





## 9 Live Your Rights – case studies

## 9.1 Live Your Rights – case studies

- 9.1.1 We have provided examples in this section. They describe some of the ways that Disabled People, their families or their organisations have used laws about equality and Disabled People to challenge decisions when local authorities tried to cut services or funding.

Some of the examples in this section are about private companies, e.g. transport providers and banks, which have not provided access to Disabled People or have treated them in a worse way than non- Disabled People. There are lots of other examples of cases like these, but there is not enough space in this pack to include details about all of them.

## 9.2 Case Study Film – Community access group vs its local authority [2012]

- 9.2.1 In this short film (linked below) Jan talks about the case she fought with the group Give Us Back Our Access to make Bangor High Street accessible to disabled people again.

English subtitled version:  
<https://www.youtube.com/watch?v=ilrnvc8yFGQ>

Welsh subtitled version:  
<https://youtu.be/Gp2Up2WKfM>

- 9.2.2 This case study was used in the previous version of this document. It described how changes made to the High Street affected Blue Badge holders and the steps the campaign group took to challenge the decision with the local authority.

When the previous version of this toolkit was released, the campaign group were still waiting for a judgement from the Public Services Ombudsman for Wales. After the toolkit was released and the Ombudsman made their judgement and communicated with the council, the campaign group was provided with a compromise by the local authority. Now, Bangor High Street is open at 4:30pm and is closed at 10:00am the following day, allowing Blue Badge holders more time to use the businesses on the High Street.

### 9.3 Case Study Film – Parent of a Disabled child vs local authority

- 9.3.1 In this short film (linked below) Vin talks about the struggle he and his wife had accessing Direct Payments for their Disabled daughter.

English subtitled version:  
<https://www.youtube.com/watch?v=IKWAh77gcXA>

Welsh subtitled version:  
<https://www.youtube.com/watch?v=CTrg8LPDOyl&feature=youtu.be>

## 9.4 Case Study Film – Disabled Person in South Wales vs local authority

- 9.4.1 In this short film (linked below) Trevor talks about the challenges he faced accessing appropriate care from social services.

English subtitled version:  
<https://www.youtube.com/watch?v=bPoz2tLCVFk>

Welsh subtitled version:  
<https://www.youtube.com/watch?v=goByqK40F-8>

## 9.5 A South Wales group of people with visual impairments versus a South Wales Borough Council [2011]

### 9.5.1 What was the issue?

- 9.5.2 A Borough Council in South Wales wanted to introduce car parking charges in council car parks for Disabled People who have Blue Badges. They said that they would only carry out informal consultation about this change, as they said that they did not need to do any other kind of consultation.

### 9.5.3 What happened?

- 9.5.4 The Chair of the visual impairment group wrote to the local Assembly Member, listing the reasons why car parking charges for Blue Badge holders should not be introduced:
- Under the 2010 Equality Act councils are required to consult and find out how changes they want to make will affect people with “protected characteristics”

- An Equality Impact Assessment had not been conducted about the proposal
- The Council's duty under the Equality Act 2010 to take forward equality of opportunity by removing or minimising the disadvantages experienced by those who share a 'protected characteristic' (in this case 'Disabled People') were being ignored
- The proposal would make it harder for Disabled People to take part in social activities
- A lot of Disabled People are poor and so struggle to pay the parking charges. There is good evidence about this. For example, the "Disabled Poverty in Wales" report produced by Leonard Cheshire (2011), the EHRC report 'How fair is Wales' (2011) and the DEMOS report 'Destination Unknown' (2010)
- Cuts in benefits for Disabled People, for example, DLA changes to PIP, closure of the ILF, etc. will mean that Disabled People are poorer and this will also affect their ability to pay car parking charges
- Public transport remains only partly accessible to Disabled People and despite efforts by the visual impairment group, "there have been no efforts made by bus companies to adapt the service for visually impaired users despite our efforts to engage with them in a proactive and positive way"
- Isolation is a huge problem for people with visual impairment "as mobility is a real issue and transport is a very big challenge." Travelling by car is often the only way that people with visual impairments can get about. The introduction of charges for Blue Badge holders may mean that they have to make fewer journeys



- The visual impairment group contacted other disability organisations, including Disability Wales, asking them to support their opposition to the proposed charges.

### 9.5.5 What was the outcome?

- 9.5.6 The proposal was dropped but the group thinks that the council may try to introduce the charges again in the future and do a full consultation. If this happens the visual impairment group plans to have a letter-writing and media campaign against the charges.

## 9.6 Disabled University Student (AB) verses a Welsh University (2013)

### 9.6.1 What was the issue?

- 9.6.2 The library for the University was built in a way that made it inaccessible to Disabled People. It had problems with evacuation routes and fire exits as well as problems with communications which made it unsafe for wheelchair-users.

AB was also not given a Personal Emergency Evacuation Plan until April 2014, when one should have been provided to him on the first day of his course in October 2013. When a fire alarm went off in May 2014, AB was abandoned at the top of a stairwell while the building was evacuated.

AB was also refused reasonable adjustments when a senior member of staff refused to allow him to record a meeting about the complaints he was making. The staff member then cancelled the meeting when AB asked to be able to bring his wife to the meeting.

### 9.6.3 What happened?

- 9.6.4 The senior staff member claimed that AB was not entitled to the reasonable adjustments he requested because AB was a student and not an employee.

AB reported his concerns about the fire safety procedures in 2013 when the library lift broke down. Even though it was repaired, the University took four months to make the necessary changes to make the library safe and accessible. During that time Disabled students could not access the basement floor of the library.

- 9.6.5 AB launched an internal stage 1 complaint against the University and when this was unsuccessful, went through to stage 2. He was told by the University to take it to the Office of the Independent Adjudicator.

AB used a subject access request under the Information Commissioner's Office's policy (which comes under the Data Protection Act) to gain access to the emails of senior management. In an email sent by the University's pro vice chancellor for student experience, it was admitted that the building was constructed without taking the Disability Discrimination Act requirements into account in order to save money.

AB contacted the Equality Advisory and Support Service and a Cardiff charity called Race Equality First. With their support, legal action was taken against the University in which AB claimed he had been discriminated against because the University lift had been broken for so long, the reasonable adjustments he requested had been denied, and he was not provided with a Personal Emergency Evacuation Plan at the beginning of his course.

#### 9.6.6 What was the outcome?

- 9.6.7 AB agreed to settle the case with the University and received £20,000 in compensation from them.

AB and his wife have used this case and submitted evidence to an inquiry carried out by a House of Lords committee in 2015 about the impact of the Equality Act (2010).

You can find more information about this case here: <https://www.disabilitynewsservice.com/disabled-student-wins-20k-after-university-built-library-it-knew-would-breach-dda/>

#### 9.7 Disabled resident (WK) verses Swansea County Council (2013)

##### 9.7.1 What was the issue?

- 9.7.2 A full-time electric wheelchair user, WK, who moved to Swansea in 2013 was denied direct payments by Swansea County Council. WK was already receiving direct payments from the local authority where she previously lived, but Swansea County Council did not want to pay the same amount.

The council refused to give the level of care that WK needed, which included a live-in carer, and instead suggested moving her into a residential care home.

### **9.7.3 What happened?**

9.7.4 WK contacted a solicitor to help her fight her case against Swansea County Council. She wrote to the council to inform them this was happening, and that the council was obligated under the law to provide the direct payments WK had received from her previous local authority.

### **9.7.5 What was the outcome?**

9.7.6 Due to the threat of legal action because a solicitor was involved, Swansea County Council began making appropriate direct payments to WK.

## **9.8 R (JG & MB) versus Lancashire County Council 2011**

### **9.8.1 What were the issues?**

1. A rise in the qualifying eligibility Fair Access to Care Services (FACS) Criteria from 'moderate' to 'substantial' for social care services.
2. An increase in charges for home care services.

### **9.8.2 What happened?**

9.8.3 In 2011, Lancashire County Council made a proposal to cut its 2012-13 budget by 26%. Consultation meetings with individuals and providers were organised by the Council.

Disability Equality North West (DENW - a local Disabled People's Organisation) had concerns about the wording of the consultation document and the decision-making process. They got involved to try and make sure that their views were taken into consideration and cuts in independent living services would be as low as possible.

9.8.4 Disability Equality North West had many criticisms of the consultation process about the cuts in services:

- Equality Impact Assessments were not carried out before the consultation process was done
- The EIAs that were carried out had many mistakes
- The EIAs were not rigorous enough. For example, no EIA was done on the original decision to cut funding from Adult Social Care services or the decision to stop funding non-personal care services such as shopping and cleaning
- EIAs did not take into account or accurately reflect the views of individuals and service providers and were not carried out in line with the Disability Equality Duty, Single Equality Act or the United Nations Convention on the Rights of Persons with Disabilities

- Elected members were not given accurate information about the 'alternative services' that Disabled People whose assessed needs were marked as 'moderate' would be told about or 'signposted' to social workers began to carry out reassessments before the final decision about budgets had been made

9.8.5 DENW also said that:

- Some Disabled People that the council planned to 'signpost' to other services may not be able to afford to pay for these services
- Some of those services (including DPOs) may also be experiencing difficulties due to budget cuts and in some cases, may not have the capacity to take on new clients
- 'Signposting' people to these alternative services incurred a safeguarding issue because once local authorities have 'signposted' people to other service providers they do not undertake any checks or maintain any accountability for the individual



9.8.6 In early 2011, DENW was contacted by Disabled People who told them that:

- They had not had a re-assessment of their needs but were being told that their social care support was being cut because the Council could not afford to pay for the services they had been receiving
- They were not being given any paperwork about their assessment
- They were not being told which of the Fair Access to Care Services (FACS) criteria they met
- They were just being contacted by telephone and told that they did not fit any of the criteria for receiving care services

9.8.7 DENW realized that decisions were being made about cuts or changes to services that were based on money and not on people's needs.

9.8.8 DENW discovered that the Council had agreed their new budget eleven days before the consultation about the budget was due to end and that a decision had been made to only fund personal care services. This meant that Disabled People who only had support with shopping and cleaning would have their service cut. Two policies saying this should happen and that charges for home care services should be increased were passed by the Council without any consultation with Disabled People, their families and supporters, or their organisations.

9.8.9 DENW got a report from the Council in June 2011 showing that the Council had under-spent their 2010-11 budget by £27.1m. The report said that the Council had no plans to put any of this money back into social care services or reverse previous decisions they had made about cuts in services.

9.8.10 DENW wanted to challenge what was happening. It found some people whose services had been cut, who were willing to be named in a legal challenge against the Council's decision. DENW sent a 'letter before action' to the Council. This has to be done before an application for a Judicial Review can be made. Whenever DENW named members who had had their services withdrawn, the Council would contact the Disabled Person and give them a full needs assessment. They would often be given their services back.

#### 9.8.11 **What was the outcome?**

9.8.12 The application for a Judicial Review was rejected. The Judge said that there was some basis in the complaint that a proper EIA had not been done before the Council agreed its budget. He said the timing of the Council's decisions was "perfectly lawful."

Although the case was lost, DENW says that important precedents were set. The proposed policy when the FACS criteria were tightened, of not paying for shopping or cleaning services was withdrawn, once the case against the Council had begun.

9.8.13 The legal challenge also resulted in the Council withdrawing the original budget document and introducing a weaker one with many concessions to DENW.

9.8.14 This case provides a very helpful summary of the courts' approach to public bodies' equality duties (now the new General Public Sector Equality Duty in section 149 of the Equality Act 2010). It is also a reminder that the courts are reluctant to interfere with difficult social or economic decisions made by elected officials, as long as there has been proper consideration of the relevant factors, despite other recent cases where such decisions have been overturned.

## **9.9 Burnip versus Birmingham City Council & Secretary of State for Work & Pensions**

### **Trengrove versus Walsall Metropolitan Council & Secretary of State for Work & Pensions**

### **Gorry versus Wiltshire Council & Secretary of State for Work & Pensions (2011)**

#### **9.9.1 What was the issue?**

- 9.9.2 The Local Housing Allowance Regulations which do not permit extra rent to be paid to disabled adults or children who need either an extra bedroom for their personal assistants or who cannot share a bedroom with other family members.

#### **9.9.3 What happened?**

- 9.9.4 These cases were brought by three people and “rolled-up” into one case because they were all about the same issue. Two of the cases were brought by or on behalf of disabled adults who needed twenty-four-hour support and therefore an extra bedroom where their personal assistants could stay. One of these people died before the case was heard. The third person was a man who had two disabled children. Both of them needed their own bedroom. All three had been living in privately rented accommodation and claimed Local Housing Allowance (LHA) from their local authorities, which refused to pay rent for the extra bedrooms they needed.

The people who took the cases argued that the LHA rules contravened Article 14 of the 1998 Human Rights Act. When the cases were heard at the Lower Tribunal, they were lost. They were then taken to the Upper Tribunal in 2011, which handles appeals against Lower Tribunal decisions. Once again, the cases were lost.

### 9.9.5 What was the outcome?

9.9.6 The cases were then taken to the Court of Appeal in 2012. The Court agreed that the housing benefit regulations about the number of rooms that people could get LHA for discriminated against Disabled People because they did not state that a Disabled Person's needs are different to those of a non-Disabled Person. The Court ruled that "without the benefit of the extra room rate, Disabled People would be left in a worse position than an able-bodied person living alone". This point arises from their rights under the Equality Act 2010. Winning the cases affirmed their rights under the United Nations Convention on the Rights of Persons with Disabilities (UNCRDP). The UNCRDP was not used in the cases, but lawyers said that it could have been used to resolve any uncertainty in the interpretation of the Human Rights Act if they had needed it.

9.9.7 In 2011 the LHA regulations were changed so that Disabled People who needed an extra bedroom for their personal assistance could get extra LHA. The DWP did plan to appeal the decision of the Court of Appeal about disabled children (the Gorry case). In March 2013 they withdrew the appeal. They also announced that local authorities should allow an extra bedroom for children who are unable to share because of their impairment. (Inside Housing, 13th March 2013). The law has not been changed for Disabled People whose partner may need an extra bedroom.

9.9.8 This section of the pack has looked at and explained:

- Real life examples of case studies from the courts and campaigning which use equality law.

9.9.9 This section has given information about some of the legal cases that have used equality legislation to fight against cuts to the benefits and services that Disabled People need to live their daily lives. Some of the examples did not involve Disabled People going to court. These examples show

how the laws can be used to make complaints and build campaigns to stop changes.

- 9.9.10 It is important that Disabled People and their organisations keep track of other challenges to spending cuts, changes in services and changes in government policies. You will find information in newspapers, on TV, radio and on the internet. It is useful to look regularly at the websites of groups such as Disabled People Against Cuts (<http://www.dpac.uk.net/>) and Inclusion London's Deaf and Disabled People's Organisations (DDPO) Legal Network ([www.inclusionlondon.org.uk](http://www.inclusionlondon.org.uk)).

You can also get information from the website of solicitor firms such as Irwin Mitchell Solicitors ([www.irwinmitchell.com](http://www.irwinmitchell.com)) Public Law Project ([www.publiclawproject.org.uk](http://www.publiclawproject.org.uk)), Garden Court Chambers ([www.gardencourtchambers.co.uk](http://www.gardencourtchambers.co.uk)), Doughty Street Chambers ([www.doughtystreet.co.uk](http://www.doughtystreet.co.uk)) and the Equality & Human Rights Commission ([www.equalityhumanrights.com](http://www.equalityhumanrights.com)).

## 9.10 Using the UNCRDP in complaints

- 9.10.1 Two other examples of how the UNCRDP could be used with other equality laws by Disabled People when they are fighting to have their needs met can be seen below. The first example is real. The second example is made up to show how the laws can be used.
- 9.10.2 Example 1
- 9.10.3 A disabled woman was told by her occupational therapy department that she needed a special ('profile') bed. She was not able to leave her bed and the bed she asked for would have meant her personal assistants could give her bed baths. She requested a double bed so that she could continue to sleep next to her husband. The authority said they would not pay for the bed, even though she offered to pay the difference in cost between a single and double bed. 18 months later the woman was advised by the Disability Law Centre to tell her local authority that under the UNCRDP Article 23 (the right to respect for private and family life) they should pay for the bed.



Three hours later the authority found enough money to buy the whole of her double 'profile' bed.

*(Source: Disability Now, June 2006, page 14).*

#### 9.10.4 Example 2

9.10.5 P has been receiving home-care from her local authority. She has very high support needs. She asks for her needs to be assessed again as she feels she needs more help. Her local authority agrees that her needs have increased. The only way they can meet those needs, they say, is if she moves into a residential care home. They say that their budget is under pressure and that it would be too expensive for them to pay for home support. P feels strongly that she wants to stay in her own home. She is very active in her local community and has lots of friends and interests. P can use the UNCRDP and other laws to argue that the local authority should support her to live at home.

#### 9.10.6 P can argue that:

- Article 8 of the European Convention on Human Rights places a duty on her local authority to respect her right to private and family life. This right includes being able to have friends and take part in social and cultural activities and leisure. When people go into residential care they can be cut off from friends and left out of activities they would normally be involved in if they lived at home. This right is also about protecting a person's mental and physical wellbeing. P is certain that she would become depressed if she was uprooted and deprived of her independence.
- Article 19 of the UNCRDP says very clearly that P has the right to choose where she lives and who she lives with. It says she has the right to live in the community and the right not to be forced into any particular kind of living arrangement such as a residential care home. This will strengthen her case.

- Under the Public Sector Equality Duty her local authority also has a duty to promote equality of opportunity for Disabled People. That duty should be used when decisions about individuals are being made. Moving P to a care home would remove her opportunities to take part in all the things she does at the moment. She can remind them of this and ask them whether they have done an Equality Impact Assessment (EIA). She can ask them to share the findings of any EIA with her. If they haven't done one, she can ask them to involve her when they do the EIA.

9.10.7 This section of the pack has looked at and explained:

- Ongoing legal case studies
- Legal case studies which have finished
- Case studies about situations which haven't gone to court
- How to use the UNCRDP in complaints



## 10 Further sources of information

### **Equality Advisory Support Service**

FREEPOST

Equality Advisory Support Service  
FPN4431

Telephone: 0808 800 0082

Textphone: 0808 800 0084

<https://www.equalityadvisoryservice.com/>

### **Equality and Human Rights Commission**

Block 1, Spur D  
Government Buildings  
St Agnes Road  
Gabalfa  
Cardiff  
CF14 4YJ

Telephone: 02920 447710

Email: [wales@equalityhumanrights.com](mailto:wales@equalityhumanrights.com)

<https://www.equalityhumanrights.com/en/commission-wales>

### **Advicelink Cymru - Citizens Advice**

The Citizens Advice Wales site includes guides and FAQs including ones that deal with disability discrimination. Information specific to Wales can be found on their website:

<https://www.citizensadvice.org.uk/about-us/our-work/advice-partnerships/advicelink-cymru/>

Telephone: 08444 77 20 20

They also have a service through Relay UK so that if you can't hear or speak on the phone, you can type what you want to say: 18001 then 0880 144 8884

### **Speakeasy Law Centre**

Speakeasy offers free legal advice across Cardiff and the Vale of Glamorgan. It tackles social welfare issues including benefits, debt, housing, and employment law.

166 Richmond Road  
Cardiff  
CF24 3BX

Telephone: 029 2045 3111

Email: [info@speakeasy.cymru](mailto:info@speakeasy.cymru)

<https://www.speakeasy.cymru/eng>

### **The FDF – Centre for Independent Living**

The FDF offer a range of support services, including advocacy and information, outreach support, signposting, and training and education.

The FDF  
Town Hall  
Earl Road  
Mold  
Flintshire  
CH7 1AB

Telephone: 01352 756 618

Email: [admin@thefdf.org.uk](mailto:admin@thefdf.org.uk)

<https://www.thefdf.org.uk/>

### **Disability Advice Project**

A project covering South-East Wales which provides information and advice on all disability issues through to Upper-Tier Representation.

[www.dapwales.org.uk](http://www.dapwales.org.uk)

Disability Advice Project  
9a Avondale Industrial Estate  
Avondale Way  
Cwmbran  
NP44 1UG

Telephone: 01633 485865

Email: [info@dapwales.org.uk](mailto:info@dapwales.org.uk)

### **Diverse Cymru**

Provides benefits advice, equality training, social care advice, BME mental health support, Disability Access advice. Current services include direct payments, self-directed and independent living support, befriending and advocacy. Advice service covers South Wales. Office hours are 9 a.m. to 5 p.m., Monday to Friday. They operate a maximum case load which from time to time may result in a waiting list for services.

Diverse Cymru  
3rd Floor  
Alexandra House  
307-315 Cowbridge Road East  
Cardiff  
CF5 1JD

Telephone: 02920 368 888  
01267 245 579

Email: [info@diverse.cymru](mailto:info@diverse.cymru)

[www.diverseecymru.org.uk](http://www.diverseecymru.org.uk)



### **Disabled/Deaf People's Organisations Legal Network**

The DDPOs Legal Network aims to bring together DDPOs and lawyers to work together raising understanding of the legal system, legislation, case law and policy that relates to the quality of life, rights and inclusion of Deaf and Disabled People. The Network will create a forum for disseminating legal information of strategic importance.

<https://www.inclusionlondon.org.uk/training-and-support/information-and-resources/finding-legal-advice/legal-network/#:~:text=The%20DDPO%20Legal%20Network%20brings,affecting%20Deaf%20and%20Disabled%20people.>

### **Disability Law Service**

Run by and for Disabled People.  
DLS is a registered national charity.

Disability Law Service  
39-45 Cavell Street London  
E1 2BP

Telephone: 020 7791 9800

Minicom: 020 7791 9801

Email: [advice@dls.org.uk](mailto:advice@dls.org.uk)

[www.dls.org.uk](http://www.dls.org.uk)

Their website includes a large range of downloadable factsheets covering Disabled People's rights under the Equality Act: <https://dls.org.uk/free-advice/online-advice/factsheets/>

Their website also has a list of other services that provide free information and legal advice: <https://dls.org.uk/free-advice/other-sources-of-advice/>

### **Disability Rights UK**

Disability Rights UK publish guides to disability rights, including the "Disability Rights Handbook" which can be purchased via their website.

14 Easy Bay Lane  
Here East  
Queen Elizabeth Olympic Park  
Stratford  
London  
E20 3BS

Telephone: 020 7250 3222

Email: [enquiries@disabilityrightsuk.org](mailto:enquiries@disabilityrightsuk.org)

<https://www.disabilityrightsuk.org/how-we-can-help/benefits-information/factsheets>



## Legislation.gov.uk

All UK Acts can be found at <http://www.legislation.gov.uk>, along with extensive explanatory notes about all aspects of the Acts.

Printed copies of legislation and other publications can be purchased from The Stationery Office whose contact details are below.

The Stationery Office Limited  
PO Box 29  
Norwich NR3 1GN

Telephone: 0333 202 5070

Fax: 0333 202 5080

Email: [book.orders@tso.co.uk](mailto:book.orders@tso.co.uk)

## The British Institute of Human Rights

The British Institute of Human Rights (BIHR) is an independent human rights charity that is committed to challenging inequality and social justice in everyday life in the UK.

<http://www.bihhr.org.uk/>

BIHR have several resources, including guides about how human rights law affects people with learning disabilities, and another about how it relates to mental health issues and mental capacity:

<https://www.bihhr.org.uk/resources-for-individuals>

## RNIB

The RNIB has various guides and factsheets about the Equality Act and how it affects Disabled People, including Frequently Asked Questions and guides for how to challenge discrimination using the Act:

<https://www.rnib.org.uk/search/site/equality%20act>

RNIB Cymru contact details and information can be found here:

<http://www.rnib.org.uk/aboutus/contactdetails/cymru/Pages/cymru.aspx>

RNIB Headquarters  
105 Judd Street London  
WC1H 9NE

Telephone: 0303 123 9999

Email: [helpline@rnib.org.uk](mailto:helpline@rnib.org.uk)

## Benefits and Work

An internet resource and forum providing practical, detailed and accurate information about disability and incapacity benefits written solely with the interests of claimants and their advisers in mind.

<http://www.benefitsandwork.co.uk/>

### **Human Rights Act 1998**

This law can be used to bring a case against a public authority if you feel your human rights have been violated. This link contains more information about this Act.

<https://www.citizensadvice.org.uk/law-and-courts/civil-rights/human-rights/the-human-rights-act-1998/>

### **Mental Capacity Act (2005)**

This piece of law can be used alongside equality legislation to argue for the rights of Disabled People. This link contains more information and a brief description of the Act.

[http://www.alzheimers.org.uk/site/scripts/documents\\_info.php?documentID=354](http://www.alzheimers.org.uk/site/scripts/documents_info.php?documentID=354)

### **National Assistance Act 1948**

This piece of law can be used alongside equality legislation to argue for the rights of Disabled People. This link contains more information and a brief description of the Act.

<https://navigator.health.org.uk/theme/national-assistance-act-1948>

### **NHS and Community Care Act 1990**

This piece of law can be used alongside equality legislation to argue for the rights of Disabled People. This link contains more information and a brief description of the Act.

<https://navigator.health.org.uk/theme/national-health-service-and-community-care-act-1990>

### **Cerebra templates for writing letters**

Cerebra is a registered charity that provides services and advice for children with brain conditions. Their website has lots of templates available for writing letters. These cover a wide range of topics, such as requesting information under the FOI Act and challenging decisions councils have made.

<https://cerebra.org.uk/get-advice-support/legal-and-financial/template-letters-wales/>

### **The Children's Commissioner For Wales 'Don't Hold Back' guide**

This is a guide provided by the Children's Commissioner For Wales about transitioning from childhood to adulthood with a learning difficulty and the various support and services available:

<https://www.childcomwales.org.uk/wp-content/uploads/2019/10/Dont-Hold-Back.pdf>

### **Cardiff Clinic – Support Through Court**

Support Through Court is a charity that supports people who face court alone so that they can represent themselves to the best of their ability. They provide practical, procedural and emotional support in many areas of Civil and Family court.

Support Through Court  
Cardiff Civil and Family Justice  
Centre  
2 Park Street  
Cardiff  
South Wales  
CF10 1ET

Clinic Opening Hours are Monday to Friday, 9:30am – 4:30pm

Telephone: 02920 34 36 85  
National helpline service: 03000 810 006

Email: [cardiff@supportthroughcourt.org](mailto:cardiff@supportthroughcourt.org)

<https://www.supportthroughcourt.org/>

# Thank you

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# Formats

This guide is available in English and Welsh and Easy Read.

If you would like this guide in another format please contact Disability Wales.



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Use your rights  
Live your rights!

