



File name: Challenging Cuts Training - IM
Date created: 23/11/2016
Date for revision: 23/11/2017

IM irwinmitchell
solicitors



How to challenge cuts in your local areas – Training for Mencap network partners

Alex Rook and Alice Cullingworth, 23 November 2016

Overview

1. How do you spot a potential legal challenge?
2. When should you contact a solicitor?
3. What do judicial review proceedings involve?
4. What role would Mencap have in judicial review proceedings?
5. How is judicial review funded?
6. What can be achieved by judicial review?
7. Summary – how can Mencap support families to challenge cuts?
8. Useful acronyms

Spotting a potential legal challenge

Examples of decisions which can be challenged:

- Decision by a local authority to cut spending as part of its annual budget setting process
- Decision by a local authority to withdraw funding to a voluntary organisation to provide a service
- Decision to close or reduce directly commissioned services
- Decision by a Secretary of State to change Regulations that will impact on publicly funded services
- Decision to implement a new policy
- Decision to change criteria for accessing services

Spotting a potential legal challenge

Consultations are open to legal challenge on procedural bases.

Examples of decisions in the community care context:

- Refusal to conduct an assessment
- Refusal to provide a personal budget or award direct payments
- Failure to provide an advocate
- Failure to conduct a carers assessment
- Failure to provide a transition plan
- Failure to implement a care and support plan

How do you spot a potential legal challenge?

Spotting a potential legal challenge

We are focussing today on cuts cases, but a legal challenge can be made against many types of decisions by public bodies.

Judicial review is the legal process by which individuals or organisations can challenge a decision by a public body.

Judicial review is therefore a powerful tool by which individuals can hold the state to account.

It is a constitutional principle that the judiciary can scrutinise the lawfulness of decisions by the executive.

Spotting a potential legal challenge

The first step is to identify the decision, i.e:

- Who made the decision (the cabinet, the full council, a panel, a Secretary of State) and when?

This is sometimes not clear. For example, it might be that a social worker has recommended that a particular care package be provided, but it is the panel that takes the decision. Or, a report might be provided by a committee setting out what decision should be taken, but it is not until the proposals are approved by the cabinet that the decision has been taken.