

THE HIGH COURT OF JUSTICE

CLAIM NO: _____

ADMINISTRATIVE COURT

IN THE MATTER OF A PROPOSED APPLICATION FOR JUDICIAL REVIEW

BETWEEN:

THE QUEEN

on the application of

(via his mother and litigation friend [REDACTED])

First Claimant

-and-

(via her mother and litigation friend [REDACTED])

Second Claimant

-v-

WEST BERKSHIRE COUNCIL

Defendant

WITNESS STATEMENT OF ALICE CULLINGWORTH

1. Alice Cullingworth, of 40 Horn Viaduct, London, EC1N 2PZ will say as follows:-

1. I am a Solicitor in the firm of Irwin Mitchell LLP. I have conduct of this case on behalf of the Claimants. I have seen the grounds of claim in this matter and confirm that they accord with my instructions. All correspondence referred to in this statement is contained within the Court Bundle with references in square brackets.
2. This claim relates to the lawfulness of the decision by the Defendant on 1 March 2016 to cut its funding to voluntary sector providers of short breaks services by 54%. I make this statement to assist the court with a summary of the pre-action correspondence and to explain why extensive correspondence was necessary before issuing proceedings.
3. We were first contacted by the family of the First Claimant, [REDACTED] on 2 November 2015. We were informed that the Defendant had sent letters to all voluntary sector providers of children's short breaks and respite services in the borough on 25 September 2015 to terminate their contracts for funding on 31 March 2016. We were instructed that the First Claimant relied upon services provided by West Berkshire Mencap ("Mencap") and

Crossroads Care Oxfordshire ("Crossroads") and that he would be detrimentally affected if these services reduced or ceased.

4. On 3 November 2015, the Defendant launched a public consultation regarding its budget proposals for 2016/17. The consultation documents stated that the Defendant must make savings of £20 million over the next 4 years, £11 million of which are to be made in 2016/17. The consultation included a proposal in relation to short breaks services to *"cease all the current contractual arrangements, in order to rationalise these arrangements; revising and reducing the breadth of the current provision and refocusing support to those children and families assessed to be in the greatest need. It is also proposed to reduce council funding and deliver significantly more limited short breaks provision, whilst working with the community based organisations and charities to help provide support for those families who are most able to manage their own support arrangements for their disabled children. This will save the council £345,000"*. The consultation closed on 14 December 2015.
5. We made an urgent application for legal aid on 9 November 2015 that was granted on 23 November 2015. We sent a letter before action on 30 November 2015 [C1-8], to challenge the Defendant's decision to terminate all providers' contracts to provide children's short breaks services and the Defendant's ongoing consultation.
6. In November 2015, we were approached by three further potential clients: the Second Claimant, [REDACTED] and [REDACTED]. We sent a second letter before action on the same day (30 November 2015) on behalf of the first two [C9-11] and a third letter before action on behalf of [REDACTED] dated 3 December 2015 [C12-15].
7. The Defendant provided its formal response on 14 December 2015 [C16-21]. Within its formal response, the Defendant confirmed that it had not taken any decision to cut the funding to providers. It confirmed that no final decision would be taken until 1 March 2016 when the full Council would approve the budget proposals for 2016/17. Although termination letters were sent to all voluntary sector providers, the Defendant stated that *"the Council has not decided not to negotiate a further extension of the existing contracts beyond 31 March 2016. All options remain open pending completion of the consultation"* [C17].
8. We confirmed by letter dated 21 December 2015 [C22-23] that we did not therefore intend to issue judicial review proceedings at that time to challenge the termination letters sent to providers on 25 September 2015. We sought clarification as to how the Defendant had arrived at the figure of £345,000 in savings by cutting short breaks services as it was not clear how the Defendant had determined what its statutory obligations are towards disabled children in the borough and the cost of meeting those statutory obligations but no more.

9. In respect of the calculation of the proposed savings, the Defendant explained by letter dated 8 January 2016 [C24-26] that *"the estimated saving is based on an officers' assessment of the likely spend on respite care and short breaks that focus on (a) children who met the eligibility criteria; and (b) community provision"* [C25]. No further details were provided. The Defendant stated that it was anxious to engage in ADR to avoid costly litigation, which it said could take place without lawyers [C21].
10. Our clients were content to await a final decision on 1 March 2016 before taking any further legal action. A meeting took place directly between the Defendant and providers on 4 February 2016 [52-56]. Also, the First Claimant's mother, [REDACTED] approached Children's Services directly to request a meeting to discuss her son's short breaks services provision, as she was concerned about what would be left for him to access after the cuts.
11. As set out in detail in the Grounds of Claim, on 1 March 2016 the full Council approved the proposal to reduce the budget voluntary sector organisations to provide children short breaks services by 83% (£345,000) from £415,000 in 2015/16 to £70,000 in 2016/17 and approved the allocation of £170,000 of transitional funding to children's short breaks services. Later in correspondence the Defendant confirmed that £50,000 of the transitional funding will likely be applied to Castle Gate, a council run respite service, leaving £120,000 available to voluntary sector organisations to apply for [C38]. Factoring in this transitional funding, the funding to voluntary sector organisations to provide children's short breaks services would be £190,000 in 2016/17 (£70,000 plus transitional funding of £120,000). This is a cut by 54%.
12. A meeting took place on 15 March 2016 between the Defendant and providers, including Mencap and Crossroads, during which the Defendant explained that, in light of the transitional funding, grants of up to £20,000 could be applied for by providers to continue their provision in 2016/17. Mencap and Crossroads both applied for transitional grants before the deadline of 15 April 2016.
13. We liaised with the LAA to agree funding for the First Claimant to challenge the decision on 1 March 2016. However, we were not notified by the LAA that funding had been agreed until 10 March 2016. We urgently considered the documents and prepared a letter before action to the Defendant within five working days, which was sent on 17 March 2016 [C27-36].
14. The Defendant responded on 29 March 2016 [C37-47], disputing the claim but offering to meet with the First Respondent's family *"on an ADR basis"* and that it is willing *"to make a social worker available within the next few days"* [C46]. On 1 April 2016 [C48-49] we accepted the offer but the meeting was not in fact arranged until 14 April 2016 and our request that this meeting be brought forward [C53] was refused [C54].

15. On 1 April 2016, we also sent a letter to the Defendant on behalf of the Second Claimant [C52] seeking a reassurance that her needs will continue to be met by the Defendant. In its response on 5 April 2016, the Defendant sought more time to provide a formal response under the pre-action protocol and stated that a claim on her behalf would be premature before the outcome of transitional funding grants was known [C56].
16. We responded two days later on 7 April 2016 [C57-59]. We confirmed that we would await the outcome of the meeting with the First Claimant's social worker before deciding whether to issue judicial review proceedings on behalf of the First Claimant and we invited the Defendant to provide a full formal response regarding the Second Claimant if it wished to do so by 14 April 2016. We again invited the Defendant to confirm that it will take a new decision, such as applying the Defendant's unrestricted reserves for the purpose.
17. Responding on 14 April 2016 [C60-61], the Defendant repeated that it will meet the First Respondent's needs. The Defendant suggested that it will meet any assessed needs of the Second Claimant (although it mistakenly stated that she has not been assessed).
18. We responded by letter the following day, on Friday 15 April 2016 [C62-63]. We set out why the Defendant had mischaracterised our case by focussing on the individual assessed needs of the Claimants, as opposed to focussing on our claim that the Defendant has breached its general duties to provide short breaks services as set out in our letter before action. We stated that we have no option but to issue judicial review proceedings. We also confirmed that, following the meeting with the social worker, [REDACTED] does not consider that the Defendant will be able to identify options for [REDACTED] that are most suitable to meet his needs. We explained that the Second Claimant's family is prepared to engage in dialogue with her social worker about [REDACTED] provision.
19. We were then informed by providers that the Defendant's decisions in respect of transitional grant applications were to be taken on Monday 18 April 2016 and that the outcome would be communicated within a week, i.e. by Monday 25 April 2016. We assessed that it was reasonable given that decisions would be communicated to providers within a matter of days to await this information before issuing proceedings.
20. We were informed that providers received notice on 21 April 2016 regarding the transitional funding grant applications. We are now issuing judicial review proceedings on behalf of the Claimants only 2 working days later.
21. Now that we have all of the information regarding funding to providers for 2015/16 we have been able to establish the detriment to the Claimants. In order to assist the Court, we exhibit

to this statement at "AC1" a table setting out how each Claimant will be detrimentally affected by the decision on 1 March 2016.

22. We have acted expeditiously throughout this protracted period of pre-action correspondence in order to establish the facts, accept the Defendant's offer of a meeting with a social worker in respect of the First Claimant, and to issue proceedings 3 working days after decisions were communicated by the Defendant regarding grants to providers.
23. The Claimants therefore ask the Court to intervene to correct the Defendant's unlawful decision to cut the funding to voluntary sector organisations to provide short breaks services by 54%.

Statement of truth:

I believe that the facts stated in this Statement are true.

Signed:



Dated:



THE HIGH COURT OF JUSTICE

CLAIM NO: _____

ADMINISTRATIVE COURT

IN THE MATTER OF A PROPOSED APPLICATION FOR JUDICIAL REVIEW

BETWEEN:

THE QUEEN

on the application of

(via his mother and litigation friend [REDACTED])

First Claimant

-and-

(via her mother and litigation friend [REDACTED])

Second Claimant

-v-

WEST BERKSHIRE COUNCIL

Defendant

EXHIBIT "AC1"

West Berkshire Mencap

	West Berkshire Mencap										Crossroads Care Oxfordshire	Castle Gate	Guidespost				
Service	After school club every Monday	After school club every Tuesday	After school club every Wednesday	After school club every Friday	Youth club every Thursday	Saturday club	Holiday play schemes in summer, Easter, & Xmas holidays	Gravithids play schemes in summer and Easter holidays	Residential holiday during February half term	Sleepovers, 4 nights per year	Home Sitting Service (carer attending child's home)	Activity days at weekends / holidays	Trips away during holiday	Council run overnight respite facility	Activity days during holidays		
First Claimant:																	
Second Claimant:																	
How will services be affected by the cuts?	<p>Due to the cessation of funding on 31 March 2016, after school clubs have continued at a reduced level since Easter (Children attending 2 nights per week were reduced to 1 night per week for the First Claimant)</p> <p>Mencap now has sufficient funding to continue these clubs until July 2017 via the transitional funding grant combined with an alternative source</p> <p>Once Mencap was been able to recruit new staff the First Claimant will be able to resume 2 nights per week. The Second Claimant will continue 1 night per week</p> <p>This will cease after Sat 9 July except for 6 children with profound and multiple learning disabilities</p> <p>The First Claimant will lose this service</p> <p>This service will be reduced instead of 16 days at Christmas, and 4 days over the year) Mencap will provide 8 days at Christmas, and 2 days at Easter (12 days over the year)</p> <p>The First and Second Claimants will have reduced access to this service</p> <p>This playscheme for children with profound and multiple learning disabilities and physical disabilities will cease</p> <p>This service will cease</p> <p>This service will cease</p> <p>Mencap may have to increase its charge for this service from £14 to £16 per</p> <p>Although Crossroads was granted some transitional funding, it will have to reduce the level of services it provides by approximately 40%</p> <p>The First Claimant will have reduced access to these services</p> <p>The Defendant has confirmed that funding to Castle Gate will increase and so this service will continue</p> <p>We understand that Guidespost planned to cease services even if funding was available</p>																

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Second Claimant

-v-

WEST BERKSHIRE COUNCIL

Defendant

WITNESS STATEMENT OF _____

I, _____ of _____
_____ will say as follows:

1. I make this statement in support of the Claimants' application for judicial review. I am _____
_____ mother and litigation friend. My date of birth is _____
2. Unless otherwise stated, the facts and matters referred to in the statement are within my own knowledge derived from my professional experience and are true to the best of my knowledge, information and belief. Where they are not within my knowledge, the source of my information is identified.
3. _____ is 14 years old and lives at home with us in Newbury – which is to say with me, my husband _____ and our three other children, who are aged _____. _____ has autism and a developmental disorder called William's Syndrome. He has high care needs, 24 hours a day. He is non-verbal and communicates best using an iPad or a touchscreen with icons, by pointing, and by grabbing on to someone. Whilst _____ is continent during the day (but with occasional accidents) at night he requires incontinence pads. _____ cannot wash or dress himself. _____ cannot get food or help himself to a drink, although when he is provided with food or drink he is able to feed himself with a bit of assistance. _____ has almost no comprehension of danger, such as from traffic. _____ is fully

mobile, for example he can run (although at a slower speed than others). [REDACTED] has profound behavioural issues related to his autism, including severe obsessions and difficulties in all aspects of normal interaction.

4. [REDACTED] cannot be left alone at all as he may injure himself or cause damage. He might flood the bathroom, scald himself, empty the kettle, pull wires out from the television or computer, go exploring, etc. He is unable to care for himself at all. At night, he sleeps in his own room but is very close to us. He is taken to the loo late at night but, despite having a nappy, is regularly very wet in the morning.
5. Caring for [REDACTED] affects every area of our lives. Every day, either at home or on an outing, needs to be carefully planned to enable us to keep him safe and happy, whilst allowing our other children time to have fun and be a "normal" family. It can prove almost impossible at times. He needs full adult 1:1 supervision at all times including going for a walk, going to the cinema, out for a meal, swimming, etc. He cannot even be left in the car for two minutes while we pick up other children from school. It can be amusing, exhausting, embarrassing, upsetting or completely impossible but never dull! We often feel that we are barely coping.

What services [REDACTED] enjoys

6. [REDACTED] has a care package which is funded by the Council. I manage [REDACTED] direct payments on his behalf. With these direct payments I arrange all of [REDACTED] care, including his short breaks services. I understand the rate I have paid for these is low because the providers are also funded directly by the Council. [REDACTED] attends services provided by West Berkshire Mencap, Crossroads Care Oxfordshire, Castle Gate, and Guide Post. We love [REDACTED] dearly, but it is absolutely necessary that we are able to get these short breaks – necessary both for him and for us as a family.
7. [REDACTED] attends an after school club twice a week on Tuesday and Friday from 3.30 pm to 6 pm and a weekend club on a Saturday morning once a month from 9.30 am to 12.30 pm with Mencap. [REDACTED] also attends the Mencap play schemes every holiday, which will be 6 to 8 days in the summer holidays, 2 days in the Easter holidays, and 1 day in the Christmas holidays from 9.30 am to 4 pm. With Mencap, [REDACTED] can take part in indoor and outdoor activities with other disabled young people, such as playing games at the Mencap Centre, swimming, visiting a zoo, or visiting a play park.
8. With Crossroads, [REDACTED] has day trips regularly during the year, mostly in the school holidays. This is for several days each holiday. He might go for an outing to the zoo, cinema, or for pizza for example. Also, once a year in the summer, he goes for a 2 night stay to Butlins.
9. [REDACTED] also enjoys 2 nights of overnight respite a month from Castle Gate. He will either be collected straight from school and returned to school the next day, or he attends Castle Gate from 2.30 pm

until 1 pm the next day. During these stays, [REDACTED] stays at a specially purpose built building with outdoor play area and can take part in activities such as playing in the play area and going for walks.

10. With Guide Post, [REDACTED] also takes part in activity days based at his school during school holidays. This is for approximately 8 days in the summer holiday and 2 days at Christmas and Easter.

Assessment of [REDACTED] needs

11. [REDACTED] was last assessed by Children's Services in December 2014, and a copy of this assessment is exhibited to this statement at SM1. Whilst this is rather out of date and [REDACTED] is now accessing short breaks with Crossroads as well as Menap, it is still largely accurate. The assessment reflect how high [REDACTED] needs are, for example where it states that "*[REDACTED] has a number of obsessions which can lead to increased anxiety for himself and these are difficult for the family to manage... due to the risks presented by these obsessions and [REDACTED] severely limited awareness of dangers and risks, he requires intensive supervision which dominates family life*".
12. The assessment shows how important short breaks services are in meeting [REDACTED] needs, for example when it says "*The local area has a range of community resources and amenities to meet the needs of the family*" and notes that Mencap and Castle Gate "*continue to be appropriate in supporting the outcome of the CIN plan*". It records that "*As [REDACTED] has become older he has become increasingly dependent on specialist services such as Mencap*". The fact that an important element of these services is to allow [REDACTED] to socialise with peers is also clear – it says "*[REDACTED] accesses a range of out-of-school activities providing him with opportunities to be with peers*" and "*[REDACTED] has continued to make good use of community resources and services providing respite. [REDACTED] is able to access a range of activities in the community through specialist services providing opportunities to social alongside peers*".
13. At the time of the assessment, [REDACTED] social worker concluded: "*In my opinion an increased level of respite would enable [REDACTED] to have the required 1:1 support more frequently and support the family to continue to provide the level of care and support [REDACTED] needs to stay safe and achieve his potential*" and recommended that [REDACTED] access to playschemes and holiday clubs continue, his respite at Castle Gate to continue, and there should be an increase in his direct payments.

Why these services are so important to [REDACTED] and to us

14. I literally cannot think of a single part of our lives that will not be detrimentally affected if [REDACTED] is not able to continue with the same short breaks he enjoys right now. Without these services, [REDACTED] will no longer be able to socialise with other children and adults in a safe environment. There are very few places where he can go because he is so disabled, so we are very grateful that there are places where he can go and remain safe and enjoy himself with Mencap, Crossroads and Guideposts. We

have been using them for a long time and we know and trust the employees. We have confidence that they are qualified and specially trained to provide the level of care he requires, and without that confidence we simply could not leave [REDACTED] in the care of others.

15. He loves Mencap, Crossroads, and Castle Gate and always gets really excited when he gets to go. I can tell he is happy and comfortable, especially because he knows the staff and other children, and because he is in a familiar environment.
16. The lives of the rest of the family would be completely changed as well. My husband works full time as a vet and I part time as a doctor, so losing these services would make our working lives harder. It I simply don't know how we will be able to cope.. Even though we already employ a nanny, she works virtually the same hours as my job so the same difficulties apply to her, i.e. how can she provide 1:1 and safe care for [REDACTED] whilst looking after the other children – especially during the holidays. This will also have a knock-on effect as us being tired will make it harder to take care of [REDACTED] and the rest of the family. The lives of my other children will be negatively affected as well by these changes. The short breaks Ben accesses give us the chance to take our other children out to do activities we wouldn't be able to do if [REDACTED] were there. So all our relationships with each other as a family unit will certainly deteriorate as we will be under a lot of pressure caring for [REDACTED] without the same level of short breaks as we get now. As already mentioned, the effect on the rest of the family cannot be underestimated and will be extremely detrimental and very hard.

Alternative provision locally

17. Having met with [REDACTED] social worker, it is clear that there are no services that are suitable and available for [REDACTED] if Mencap and Crossroads cannot maintain his provision. The other solutions we've found would force either [REDACTED] or us to lose something valuable, like socialisation or respite. Because of his profound disabilities there are not a lot places locally that have the safe environment and the specially trained staff he needs. Leaving [REDACTED] with carers that are not specially trained is simply not an option because of the risks this would involve to his wellbeing.
18. Increasing the Castle Gate provision will help a little but this is no replacement. Castle Gate is a very lovely (and as I understand it – expensive) overnight respite facility but it does not provide a social environment for [REDACTED] at all. The only other option would be to hire a care worker to attend on [REDACTED] 1:1. This would not be ideal and it would be much more expensive – I believe £16 per hour. It could in no way replace the services that [REDACTED] lost, because he would not be able to socialise with other children and adults, which he is able to do with his current providers. If a carer came over to look after [REDACTED] – where could they take him where he will be safe and stimulated by the environment? How would he access a peer group like he does now at Mencap and Crossroads? He could end up spending much more time at home and he will lose access to all sorts of other environments that enrich his life.

19. We will also lose the benefit of having [REDACTED] stay overnight with providers, except Castle Gate. Replacing, for example, the Butlins trip by Crossroads with a carer coming over to our home and staying overnight is just not the same. Being present, we will still to some degree be on duty, and we will not have a total break.
20. I have attempted to cost up how much [REDACTED] personal budget would have to be increased to replace his Mencap, Crossroads, and Guideposts services with a 1:1 carer at £16 per hour, and I estimate that [REDACTED] would need several thousands of pounds extra per year. I can't imagine it will save the Council anything by making these cuts to funding for providers and then increasing children's personal budgets to buy back the services they lost – and this will be to buy a worse service than what is available right now. It makes no sense to me at all.
21. It seems to me like the Council went ahead with these cuts because it had to find savings, without really looking into the actual impact it would have on disabled children like [REDACTED] and families like mine. I can't believe that it properly analysed what services would remain after the cuts because, whilst the Council says it will meet children's assessed needs – how will it do so? If the Council had looked properly at what provision would be left across the borough then maybe it would have realised that there would be nothing left to replace what would be lost.

Meeting with [REDACTED] social worker

22. Following the letter before action sent to the Council by [REDACTED] solicitors, we were told that the Council would arrange for a social worker to meet with us to discuss what options will be available for [REDACTED] after the cuts. We already had a meeting scheduled with [REDACTED] social worker for 14 April, and this was not brought forward by the Council. I had asked for this meet some time ago because I was worried about what would happen to [REDACTED] services and his social worker agreed to meet with me. The Council made no attempt to contact me to bring this meeting forward.
23. At the meeting [REDACTED] social worker and I went through all the services that [REDACTED] is likely to lose and tried to find what the local authority could identify instead. I said there were two things I believed were important when looking at alternative solutions for [REDACTED]. The first was that we needed to be sure we were taking care of all of his needs – but especially his social needs. The second would be to offer us, meaning my family, the respite that the current services offer. During the meeting the social worker confirmed that there were no "like for like" replacements in either the short or long term.
24. Looking at short term solutions for [REDACTED] we discussed another club called Beyond that is privately run and provides holiday day care but it is much more expensive (£95 per day) and also it doesn't offer as many days as he currently enjoys. Another option we discussed was increasing his direct payments in order to pay for a 1:1 carer, which not only costs the Council more money but would

mean that [REDACTED] will not get the opportunity to socialise like he does now. It will also take some time to find a suitable carer for [REDACTED], which will cause more stress for the family. The other options we discussed were facilities where he would need to be accompanied by me, which means that I will not actually be getting respite. We discussed several long term solutions as well, such as the possibility of some daytime respite at Castle Gate, but I was told that this is not currently available.

25. The following day, I drafted a note of my meeting within an email and sent this to [REDACTED] solicitor, copying in his social worker in case she wanted to comment at all on the content. A copy of my email is exhibited to this statement at SM2.
26. Following this meeting, I am more convinced than ever that [REDACTED] and the whole family will not be able to access anything like the support we get now after the cuts. Of course I am willing to keep looking, but the prospect is pretty negative. I am very disappointed that the Council did not seem to take into account this fact before it took its decision – that after the cuts there won't be the services available locally to meet [REDACTED] needs in the way he (and we) most need. It is very clear to me that once Mencap and Crossroads reduce their services, there won't be anything like for like to replace them, even with an increased personal budget.

The effect of the cuts on [REDACTED]

27. If his services cease, there are no services outside school or home that are suitable or able to care for [REDACTED] in light of his severe disabilities. This would mean he would become socially isolated from everyone besides his family. The effect this would have on him would be profound.
28. The reduction or removal of these services would also have a massive impact on our family as we use the time afforded by these services to work and more importantly to spend time with our three other children. The short breaks these services provide are critical in helping us provide a sustainable caring role for [REDACTED]. Without them, I simply do not know how we could cope as a family.
29. In conclusion, it is hard for me to express how important these services are in keeping our family together. I hope that the Council will consider carefully what I and other families are saying about these cuts and that it will realise that it has made a mistake – because once these cuts start to really bite and services reduce or cease altogether, there simply won't be anything left to fill that gap. Children like [REDACTED] will suffer awfully as a result. I hope the Council changes its mind as soon as possible to keep these vital services going.

Statement of truth:

I believe that the facts stated in this Statement are true.

Signed:

[Redacted signature]

[Redacted text]

Dated:

THE HIGH COURT OF JUSTICE
ADMINISTRATIVE COURT
IN THE MATTER OF A PROPOSED APPLICATION FOR JUDICIAL REVIEW

CLAIM NO: _____

BETWEEN:

THE QUEEN

on the application of

(via his mother and litigation friend [REDACTED])

First Claimant

-and-

(via her mother and litigation friend [REDACTED])

Second Claimant

-v-

WEST BERKSHIRE COUNCIL

Defendant

WITNESS STATEMENT OF [REDACTED]

I, [REDACTED], of [REDACTED], will say as follows:

1. I make this statement in support of the Claimants' application for judicial review. I am [REDACTED] [REDACTED] mother and litigation friend. My date of birth is [REDACTED]
2. Unless otherwise stated, the facts and matters referred to in the statement are within my own knowledge derived from my professional experience and are true to the best of my knowledge, information and belief. Where they are not within my knowledge, the source of my information is identified.
3. [REDACTED] is 8 years old and lives at home with her father, her brother Alec, who is 12, and me in Newbury. She is diagnosed with autism, ADHD, epilepsy, and cortical dysplasia. Her cortical dysplasia is a brain malformation in the frontal lobe of the right hemisphere, which is the part of the brain that is responsible for emotional and impulse control. As a result of her conditions, [REDACTED] is incredibly volatile and often violent. She spirals out of control quickly and is very impulsive, which makes it difficult for her to learn. At 8 years old she can't yet read or write, even though she is very bright, due to her disabilities. It is also very difficult for [REDACTED] to make friends because of her ASD and her poor emotional and impulse control.

4. Caring for [REDACTED] has had a huge impact on our lives. Our family is in constant state of fight or flight because of [REDACTED] impulsive and violent reactions. She needs constant attention and will lose control if she loses your attention for a moment. It is especially difficult on her older brother [REDACTED] who even has to keep a padlock on his bedroom door to keep her from coming in, hurting him, calling him names, and breaking things. Her behaviour means that we cannot have a normal family life. Simple things like helping [REDACTED] with his homework or playing a game with him become nigh on impossible because she needs to be the centre of attention most of the time.

What services [REDACTED] enjoys

5. [REDACTED] has a care package funded by the Council, which I organise on [REDACTED] behalf using direct payments. With these direct payments I buy all of [REDACTED] care, including short breaks services. [REDACTED] attends services provided by West Berkshire Mencap and she also has a 1:1 care worker, called [REDACTED]. These services are critical, not only for [REDACTED] own wellbeing but also to keep us afloat as a family.
6. [REDACTED] receives services provided by West Berkshire Mencap. With Mencap, [REDACTED] attends the after school club on Mondays and play schemes every holiday. She goes to these play schemes for a number of days in the Easter holidays, the Christmas holidays, and 8 days in the summer holidays. There is a sensory room for her to use, a soft room play area, and an outdoor play area. The 1:1 services they provide are exceptional in my opinion. This service provides [REDACTED] with a safe environment to play in while fulfilling her care needs. [REDACTED] always wants to go to Mencap because she loves playing with the other children there. In contrast, although she likes [REDACTED], she sometimes objects to going out with her because she doesn't want to spend time with an adult, she would rather play with other children her age. [REDACTED] also spends 2 hours after school and 4 hours during the weekend with her 1:1 care worker, [REDACTED]. We were very lucky to have found [REDACTED] because with [REDACTED] unique needs she needs someone who is very experienced.

Assessment of [REDACTED] needs

7. [REDACTED] has been assessed by the Children's Services and a copy of her latest Child in Need Plan, which is dated 24 March 2014, is exhibited to this statement at HF1. It was after this assessment was conducted that [REDACTED] was diagnosed with cortical dysplasia and heterotopia, which is why these diagnoses are not mentioned. 18 months ago we were going through a very stressful time and so the hours of respite were increased to 10 hours a week for 3 months. Ten hours a week worked very well for us but, after the three-month period, the hours were reduced again to 6, which is what [REDACTED] has now. We were unhappy with this and made an appeal for the hours to be maintained at 10 but regrettably we were not successful.

8. [REDACTED] Child in Need Plan shows how extensive her needs are, stating that [REDACTED] "high level of complex needs places additional demands on the family". It states that at school [REDACTED] "interaction with peers are limited due to requiring 1:1 support for her emotional and behavioural needs". Also the fact that caring for [REDACTED] impacts on quality time with our son Alex is clearly recorded. Mencap was identified as a provider to meet her needs, particularly in relation to socialising with peers: "It has been identified that [REDACTED] could attend a mencap after-school club so she has further opportunities to socialise with peers in her age group and have similar needs whom she may be able to associate herself with". So accessing Mencap services was always about giving us a break and, equally importantly, so that [REDACTED] can socialise with children her own age more.

Why these services are so important to [REDACTED] and to us

9. [REDACTED] life would be dramatically impacted if she were no longer able to continue with the short breaks provided by Mencap. Most importantly, they give [REDACTED] an opportunity to socialise with other children. [REDACTED] spent two years out of the classroom being taught 1:1 because, within a classroom environment, she spiralled out of control. She would disrupt the learning of others by running about, screaming, throwing things and sabotaging activities. Because of her sensory processing issues, which are extremely severe, her poor attention and her need to be on her own agenda at all times, she was unable to learn in a classroom setting. Consequently, both in Year 1 at [REDACTED] School and in Year 2 at the autism resource at [REDACTED] Primary she was taught out of the classroom 1:1 or even 2:1. When she arrived at [REDACTED] special school last September she didn't know how to relate to other children and her class teacher described her as "a lonely little girl". Mencap not only provides her with the opportunity to socialise but it allows her to do so in a safe environment. She always wants to go to Mencap because she knows she will be able to play with other children, an experience she does not get with her 1:1 carer. Mencap is also fantastic because it gives her a place to go for an extended period of time. With a 1:1 care worker she is not allowed to stay at the care worker's house for more than three hours, making it expensive and difficult to keep [REDACTED] entertained as there is only so many times you can go to McDonalds or the cinema. During the summer holidays [REDACTED] loses the social structure that she enjoys during the school year making Mencap very important for her. Being able to go to Mencap for 2 days a week gives her the structure she needs and gives us peace of mind knowing that she is having fun with other children in a safe space with excellent staff.

10. It is these short breaks services that keep the family together. Taking care of [REDACTED] has been very hard on the family, especially for [REDACTED] her older brother. Because of [REDACTED] he can't bring many friends home and he goes to counselling at school. [REDACTED] will target [REDACTED] pinch him, kick him and throw things at him. With the short breaks services we are able to do things with [REDACTED] we would never be able to do otherwise, as we would have to spend all of our time and energy taking care of [REDACTED]. It also gives us a time to recharge our batteries because otherwise we would not be able to

cope with the constant care and attention [REDACTED] needs. The Holidays are especially difficult for us and we always come back from holiday completely exhausted.

11. For example, we just got back from a week long holiday and we had brought a lot of board games in the hopes of being able to play them with [REDACTED], however we were unable to do so because we spent all of our time taking care of [REDACTED]. With [REDACTED] it is impossible to do things that other families take for granted.

Alternative provision locally

12. [REDACTED] social worker came over to our house on the evening of 20 April 2016 to discuss her short breaks and respite, and suggested that she may be able to arrange for an additional night of 1:1 care per week, which could be provided by [REDACTED]. I will not know if this additional respite will be provided until a decision is made by the Panel to fund this. Whilst we would be grateful for this additional support, this will not be a real substitute for Mencap's services. [REDACTED] wants to be around other children, which I believe is very important too, and this doesn't happen with [REDACTED]. [REDACTED] is fantastic and a great 1:1 care worker for [REDACTED] but [REDACTED] doesn't always want to spend time with [REDACTED] while she always wants to go to Mencap.
13. We have had a lot of difficulty finding other respite services for [REDACTED]. We have a social worker who has tried to find suitable placements for [REDACTED] but even the social worker has admitted there is an unmet need. For instance, [REDACTED] was assessed for Castle Gate, however, she was deemed too bright for the program and was therefore rejected. I have spoken to many people and they all agree that Castle Gate would not be a suitable alternative for her as she would not have the social group she needs, like she has at Mencap. We have also been looking for an overnight placement for [REDACTED], such as a foster family who could meet her unique needs. Unfortunately, I don't think that we will be able to find a suitable place for [REDACTED] to stay overnight because it has been two years and we (and the Council) haven't found a family or a place that provides the environment she needs.
14. Another option would be to send [REDACTED] to a residential placement. We might seriously have to consider this if we lose Mencap because we can't cope without the respite it provides. We love [REDACTED] and do not want to send her to a residential placement but we can't take care of her the way she needs without Mencap.
15. It is very difficult for me to understand how the Council could go ahead with its decision to cut funding to Mencap without understanding the impact it would have on disabled children like [REDACTED]. I don't believe the Council realised what the consequences would be – that you can't just increase [REDACTED] personal budget and everything will be fine. I think the Council conducted its consultation but didn't actually try to work out the effect of the cuts, as in what services would stay and what would go, and what would actually happen to those children using those services.

The effect of the cuts on [REDACTED]

16. Without the respite services [REDACTED] will not have access to the socialisation within a safe environment that Mencap gives her. Other similar places such as Castle Gate would not be able to meet her needs for socialising the way that Mencap does. [REDACTED] looking after [REDACTED] for an additional night per week will help, but it is no replacement for Mencap's services.
17. It would also lead to a lot of problems within the family, such as causing more stress and anxiety for her brother and even more responsibility for my husband and me. We don't have any extended family or other support network nearby that could help us shoulder a part of the responsibility. My husband and I would spend a lot more time caring for her. With the loss of Mencap we might have to find a residential placement for [REDACTED] because it will be our only other option because our family wouldn't be able to cope with the added burden that would be put on us.
18. I find it very distressing that the Council didn't take into account all of these consequences before it took its decision to cut its funding to providers. It just didn't seem to consider properly what would happen on the ground if the cuts went ahead. I hope that now the Council has been given lots of information about the real suffering that will be caused to children and families that it will change its mind and provide the funding necessary to save these services.

Statement of truth:

I believe that the facts stated in this Statement are true.

Signed:

[REDACTED]
[REDACTED]

Dated:

THE HIGH COURT OF JUSTICE

CLAIM NO: _____

ADMINISTRATIVE COURT

IN THE MATTER OF A PROPOSED APPLICATION FOR JUDICIAL REVIEW

BETWEEN:

THE QUEEN

on the application of

(via his mother and litigation friend [REDACTED])

First Claimant

-and-

(via her mother and litigation friend [REDACTED])

Second Claimant

-v-

WEST BERKSHIRE COUNCIL

Defendant

WITNESS STATEMENT OF LEILA FERGUSON

I, Leila Ferguson, Chief Executive of West Berkshire Mencap, The Mencap Centre, Enborne Gate, Enborne Road, Newbury, Berkshire RG14 6AT will say as follows:

1. I make this statement on behalf of West Berkshire Mencap in support of the Claimants' application for judicial review. I have worked for West Berkshire Mencap for 20 years starting as a Children's Manager. Since 2003, I have been Chief Executive and therefore ultimately responsible for West Berkshire Mencap. Before becoming CEO I was a Family Advisor working with the families, most of whom use our services. I am therefore very aware of how much the short breaks and respite services are needed. Regularly I have meetings with parents, far too many of whom are at breaking point, whom rely on our services to give them much needed respite. Besides direct meetings with parents and carers I have formal qualifications including a MSc in Voluntary Sector Management.
2. Unless otherwise stated, the facts and matters referred to in the statement are within my own knowledge derived from my professional experience and are true to the best of my knowledge, information and belief. Where they are not within my knowledge, the source of my information is identified.

West Berkshire Mencap

3. West Berkshire Mencap was founded in 1954. It is an independent charity (registered charity number 1076658) and a company limited by guarantee (company number 3790942). We are affiliated with but are not funded by the national Mencap, which is a totally separate charity, to whom we pay an annual fee.
4. Funding by West Berkshire Council has been in place for our Children's Services at various levels and under various SLAs for 14-15 years. For the last financial year 2015/2016 our contract funding from West Berkshire Council was £136,789. This SLA incorporates both Short Breaks funding (previously called "Aiming High" funding) as well as the Children's Services SLA and Carers Children funding for our Family Advisory Service team. For the financial year 2015/2016, this SLA represents 70% of our funding for these services. Our other income comes 20% from sessional fees charged to parents and 10% from grants made by other charitable trusts. We are therefore heavily dependent on funding by West Berkshire Council in order to provide our Children's Services.
5. In order to run our Children Services, we have the following staff:
 - a. 2x full time staff – a Senior Children's Officer and a Children's Officer, who must be qualified with NVQ Level 3;
 - b. 1x part time Children's Manager, who must be qualified with an NNEB;
 - c. 10x part time regular sessional staff – Play Workers, 3 of whom are qualified with NVQ Level 3 and 7 of whom are working towards this qualification;
 - d. 5x bank staff for our Play Scheme;
 - e. 50x volunteers weekly to staff our After School Club, Youth Club and Saturday Club;
 - f. 30x additional volunteers for our play schemes;
6. All our staff have undertaken and continue to undertake relevant training to their position within Children's Services. We require training in the following areas: epilepsy, anaphylactic shock, paediatric first aid, safeguarding children and young people, gastrostomy, medication, diabetes, manual handling, PRICE (restraint training), food hygiene, and learning disability awareness.
7. We provide the following Children's Services:
 - a. After School Club – Active Zone. Active Zone started in November 2001 and provides daily care for school aged children with a learning disability. Active Zone operates daily (except Thursdays) from 3.30pm – 6pm. The after school club caters for 5-18 year olds and provides fun activities on site as well as the children having use of the sensory room, playground and soft play room. The children that attend the after

school club have a 1:1 volunteer carer from local schools who assist the children in daily activities and encourage play and social interaction. 56 children attend every week with 7-9 staff members working the After School Club. The First Claimant attends the after school club every Tuesday and Friday and the Second Claimant attends every Monday.

- b. Youth Club – Funky Thursdays. Funky Thursdays started in 2001 and is a youth club that runs every Thursday during term time from 6-8pm. The club is aimed at the teenagers aged 12-18. The teenagers are involved in creating the programme of events, such as a disco, quiz night, cooking, a trip out to Pizza Hut or playing snooker and the games console. 26 children attend every week and 4-6 staff members work the Youth Club.
- c. Saturday Club. Saturday Club was established in 2001 and runs once a month for children aged 3-18 years. The club is split into 2 sessions. Session 1 runs from 9.30-12.30 and is for children aged 10-18 and Session 2 runs from 1.30pm-4.30 and is for children aged 3-10 years. The club operates at the Mencap Centre and is a play based session. The children have access to a wide range of toys, soft play room, sensory room and fully equipped playground. We also offer craft, cooking and other sensory activities during the session. There are 7 fully trained staff on site and volunteers who provide 1:1 support to the children. 36 children attend every month and 10 members of staff work the club. The First Claimant attends the Saturday club once per month.
- d. Holiday Play Schemes. These schemes have been running for 11 years over the Christmas, Easter and Summer Holidays, taking in children aged 3-18 years with a wide range of abilities and needs. We take up to 25 children a day. Each child is given a 1:1 volunteer carer for the day. The volunteers are mainly recruited from local schools and colleges and are given training in subjects such as basic first aid, communication, health and safety and play. There are also highly skilled and experienced staff on site. The Play Schemes also allow the children the opportunity to access occasional trips out as well as the facilities on offer at the centre. 78 children attended in the summer of 2015. Depending on individual need and whether a child needs 1:1 or 2:1, staffing numbers are between 8-12. Both the Claimants use our Holiday Play Schemes.
- e. Greenfields Play Schemes – The scheme has been running for 5 years during the Easter and summer holidays. This is a specialised play scheme for children with Profound Multiple Learning Difficulties with high care needs and physical disabilities. Each child is staffed 1:1 due to their care needs. This is a more relaxed and sensory

based play scheme. It ran for 7 sessions during last summer for 11 children. 8 members of staff work these sessions.

- f. Residential Holiday – This runs during the February half term and takes 6 young people away and all have 1:1 support from staff/volunteers.
- g. Sleepovers is our newest services, which has been running for 3 years. It runs for 4 days a year and a maximum of 8 young people access this service at one time. Between 3-4 staff work these sessions.

8. Our above services support a total of 150 families.

9. The children's needs vary widely, but the majority of children and young people who access our services have one or more of the following: mild learning disabilities, communication difficulties, severe learning disabilities, profound and multiple learning disabilities, Autistic Spectrum Disorder, Severe Autistic Spectrum Condition, Downs Syndrome, Cerebral Palsy, complex epilepsy, complex medical conditions, Sensory Processing Disorder, microcephaly, Angelman's Syndrome, CHARGE Syndrome, and diabetes.

Effect of the cuts on our Children Services

10. Ever since the Council sent termination letters to providers on 25 September 2015 to end our SLAs, our ability to recruit and retain both staff and volunteers has been negatively affected. The uncertainty of our funding position has meant existing staff have been looking for other roles elsewhere and volunteers similarly will be casting around for other volunteering opportunities. This is inevitable as we had to be honest with our staff, volunteers and families that our funding would cease on 31 March 2016. To date we have lost 3 members of staff, including 1 manager, and recruiting new staff to our Children's Team has been virtually impossible for us as we cannot offer any reasonable length of contract. We recently had one applicant withdraw their application because of the cuts to services when they read about it in the local press.
11. Since the cuts were announced in October 2015, we have had to take some tough decisions about what services we can continue to provide and for how long. We decided that we will be able to continue our after school clubs that Claimants attend, at least until 20 July 2016. However, since Easter we have had to reduce the access to these clubs because of our staffing shortages. We have notified parents of children who attended 2 nights per week, such as the First Claimant, that their children can only attend 1 day a week in the interim.
12. We also run a Children's outreach service which is delivered via Your Choice Services which is West Berkshire Mencap's registered domiciliary care agency. Whilst families can use this service to pay for carers to come over to their homes and provide short breaks that way (either in the home or out in the community), we know this is not the kind of short breaks service that most of

our families need. Critically, the child loses the massive benefit of being in a social environment outside of their home. As a result of the cuts, we are having to increase our charges for the home sitting service from £14 per hour to £16 per hour. So any family trying to replace the loss of our other short breaks services via our home sitting service will need to meet our rate of £16 per hour.

13. In the interim, whilst we awaited a decision from the Council about transitional funding grants, we have tried to keep as many of our services going at the same level as before, but it has been impossible for us to continue all services as before.

Outcome of transitional funding grants

14. We received notice on 21 April 2016 that we have been only partially successful in our applications for transitional funding grants. We made 5 separate applications, 1x application for £17,102 to fund our playschemes and 4x applications for £15,500 to fund our 4x after school clubs. This amounts to £79,102 – the most we thought we could apply for.
15. The Council granted us the £17,102 we requested to fund our playschemes but only 4x £12,000 to run each of our after school clubs. This means we have been granted a total of £65,102 for this year to run our short breaks services. Whilst this is of course a great improvement on zero funding, which is what we would have got without the transitional funding grants, given that our funding by the Council last year was £136,789, this means we have lost £71,687 in funding this year, which is a cut by 52%.
16. We have been working hard to identify other sources of funding and luckily we have secured a funder to assist with the shortfall in the funding for our after school clubs, which means that these and the youth and bubble clubs will run as normal until July 2017. Once we have recruited new staff, children like the First Claimant will be able to return to using the clubs twice a week.
17. We will still have to make some significant reductions in our services however:
 - a. We will be able to run our holiday playschemes but we will reduce the number of days. Instead of 16 days at summer, 2 days at Christmas, and 4 days at Easter (22 days over the year) we will provide 8 days at summer, 2 days at Christmas, and 2 days at Easter (12 days over the year);
 - b. The Saturday club will cease after 9 July 2016, except for the children with profound and multiple learning disabilities, who we will continue to support (again subject to staffing). This means that the number of children attending will reduce from 20 to 6. The First Claimant does not have profound and multiple learning disabilities and so he will lose this service after 9 July 2016;
 - c. Greenfields Play Schemes – will cease;

- d. Residential Holidays – will cease; and
- e. Sleepovers service – will cease.

Communication with the Council

18. We see that the Defendant says in its formal response to the Claimant's letter before action that it has "*not been made aware*" by providers that services may have to cease to exist due to the cuts. This is not correct. We have engaged with the Council and have explained on numerous occasions the fact that with massive cuts to our funding we will not be able to maintain the level of services we provide now.
19. Shortly after the termination letters were sent, we attended a meeting with the Council on 30 November 2015 at which we explained the likely impact on the services we run and the consequences for families, carers and children if our SLA ended. The minutes to this meeting are in the Court Bundle at D48-50. As recorded in the minutes, we made it clear that if some funding continued we could maintain core services but to fewer children and that our other sources of income were unreliable.
20. We submitted our consultation response online and were not provided with an electronic copy. From memory, we explained in our consultation response why short breaks services are so important to local families and that the cuts would jeopardise our ability to continue to provide those services. We also started a petition using the website 38 Degrees for "West Berkshire Council to change their mind on their proposal to cut the funding of disabled children's short breaks at West Berkshire Mencap", explaining that "West Berkshire Mencap support the most complex and vulnerable of children who quite literally have no other respite options". This petition has attracted 3,705 signatures to date. A copy of the web page is exhibited to this statement at LF1.
21. On 23 December 2015 we sent a letter to Ms Juliet Penley, the Children's Services Manager at the Council, requesting an extension to our SLA beyond 31 March 2016. A copy of this letter is exhibited to this statement at LF2. In response to this request we received a single sentence by way of refusal: by email on 5 January 2016 Ms Penley said "*discussions are continuing and no decisions have been made. So I am unable to agree any extensions at present*". A copy of this email is exhibited to this statement at LF3.
22. On 8 January 2016 we wrote again a letter to Ms Penley explaining that the anticipated cuts to our funding on 1 April 2016 were causing us staffing difficulties that were impacting our services. We were concerned that our services would become unviable before a decision was made on 1 March 2016 about the budget for children's short breaks services in 2016/17. We requested an

extension to our contract beyond 31 March 2016 as a matter of urgency. A copy of our letter is exhibited to this statement at LF4.

23. We received a response by letter dated 8 January 2016, which said the Council was not willing to negotiate by correspondence but indicated that it is open to ongoing discussions. A copy of this letter is exhibited at LF5.
24. Following this my colleague Ms Emily Buckmaster, Manager of our Children's Services, attended a meeting on 4 February 2016 with the Council and providers, the minutes of which are contained in the Court Bundle at D52-56. There are mistakes in these minutes (such as comments made by the NAS that are attributed to us) and it is only a partial record of what was said. Looking at our own notes of this meeting, Ms Buckmaster said that it is difficult for our Trustees to make decisions about what services will close or will need to be reduced until we know what decision is going to be made by the Council about our funding. So we made it very clear that, depending on the funding decision made by the Council on 1 March, more or less of our services would cease.
25. On 2 March 2016, I wrote an email to the Council following a telephone conversation I had with Ms Penley to confirm in writing that *"we need to give notice on the toy library as the cuts have sadly made it impossible for us to run and it is costing us far more than we can afford to run."* On 3 March 2016, I wrote a further email to the Council confirming what other reductions to our services the Board had decided were necessary, as described above. A copy of my email is exhibited to this statement at LF6.
26. On 15 March 2016, Ms Buckmaster attended a meeting with the Council and other providers to discuss the impact of the cuts and the future of our services. A copy of the minutes are in the Court Bundle at D187-189. Ms Buckmaster explained during this meeting the difficult position that we were in and that as a result of the cuts we were reducing our services. This was recorded in the minutes of the meeting.¹
27. On 16 March 2016, Ms Buckmaster emailed the Council a copy of the letter we had already sent to parents, notifying them of the reductions in our services, a copy of which is exhibited to this statement at LF7.
28. We have been transparent with the Council about the level of reductions to our services that will be a consequence of the cuts, at least so far as this is possible without knowing what transitional funding will be granted to us.

¹ *"Emily Buckmaster (Mencap) said that they had sent a letter out to parents/carers asking those with an extra After School Club session to reduce the number of days. She also confirmed that they are not running playschemes over the summer holidays but that the Youth Club was safe."* (Page 3)

Provision across the borough

29. In our view, the Council did not even attempt to anticipate what the impact of its decision to cut our funding would be. Given that it conducted a public consultation on the proposals, we expected that the Council would make a serious effort to look at what services would stay and what would go if the cuts went ahead. We expected that the Council would conduct some sort of broad review of the services that are available locally, how many disabled children in the borough have needs for these services, and whether enough would remain after the cuts to meet those needs. In short, we assumed that the Council would analyse the demand for and supply of services across the borough before taking a decision to axe funding to voluntary providers to provide these services by 54%. Without doing this analysis, how could the Council know whether enough services would continue after the cuts to meet its legal duties towards disabled children?
30. It is clear to us, in light of all the conversations, meetings, and correspondence we have had with the Council, that it has not conducted any such review of short breaks provision locally. The cuts were presented to us providers as something that is necessary, i.e. it had to happen, and we were asked to come up with creative solutions or other sources of income in order to continue services after the cuts. In meetings we were asked by the Council about what services we provide and told to liaise with other providers to try to work out new ways of working together to ensure that no services are duplicated and that we target what services remain at the children most in need. They asked us in our transitional funding grant applications to show that our services will be sustainable, i.e. they can continue in the future without continued funding by the Council, which is obviously very difficult for us to be able to show. But all this was the Council asking us providers to work together in response to the cuts, as opposed to the Council taking a broad view of services to reach a decision about what would be enough to ensure sufficient provision locally.
31. It appeared to us that there was no officer in the Council that had a really good understanding of what services were already in existence, to whom they were provided, and what the minimum level of provision needs to be to meet the assessed needs of the children. For example, whilst we provided information to the Council about what services we provide and to how many children, we have not seen any evidence that the Council analysed this information in order to assess what services might stay, what might go, and how many children (and which children) we support will lose those services if the cuts went ahead.

The importance of our short breaks services

32. Several families have recently indicated to members of staff that West Berkshire Mencap services have prevented them from going into crisis because it has given them opportunities to have a break from their caring role, enabled them to spend time with their other children, and to work and

to maintain normal family life. Without these services their child/ren would be in care, residential care, residential schooling, or foster care.

33. The services we provide are also pivotal for disabled children because they provide an opportunity to socialise with their peers. If these children cannot access the same level of services due to the cuts to our funding, then children will lose their social networks and the support that families benefit from will disappear.

34. West Berkshire Mencap are not aware of any other local services in the borough who could offer the short breaks services we provide, apart from those organisations which are also affected by the same cuts to funding by West Berkshire Council – such as Crossroads Care and the NAS. It is unlikely therefore that children will be able to access alternative services locally that offer what we can offer – these cuts will inevitably reduce the availability of short breaks services across the whole borough. In particular, what will be lost is the group activities that we offer where children are provided with a social environment that is safe and meets their care needs as well as their needs for socialising.

Statement of truth:

I believe that the facts stated in this Statement are true.

Signed: _____

Leila Ferguson

Dated:

THE HIGH COURT OF JUSTICE

CLAIM NO: _____

ADMINISTRATIVE COURT

IN THE MATTER OF A PROPOSED APPLICATION FOR JUDICIAL REVIEW

BETWEEN:

THE QUEEN

on the application of

(via his mother and litigation friend _____)

First Claimant

-and-

(via her mother and litigation friend _____)

Second Claimant

-v-

WEST BERKSHIRE COUNCIL

Defendant

WITNESS STATEMENT OF MARY RAINFORD

I, Mary Rainford, Chief Executive of Crossroads Care Oxfordshire, Crossroads Centre, Marston Court, Oxford, OX3 0EA will say as follows:

1. I make this statement on behalf of Crossroads Care Oxfordshire ("Crossroads") in support of the Claimants' application for judicial review. I am the Chief Executive of Crossroads, overseeing both our adult and children's services. I work closely with our Children Services Manager to ensure a vital and varied programme of support for people who care for children and young people and also for children and young people with care needs. We also support young adult carers.
2. Unless otherwise stated, the facts and matters referred to in the statement are within my own knowledge derived from my professional experience and are true to the best of my knowledge, information and belief. Where they are not within my knowledge, the source of my information is identified.

Crossroads

3. Crossroads has been providing support to adults and children for over 40 years. We continue to provide daily support to people with care needs in a variety of ways including:
 - a. Daily domiciliary visits;

- b. Holiday breaks;
 - c. Weekend breaks;
 - d. Day trips;
 - e. Sitting services;
 - f. Social activities and groups;
 - g. Companionship; and
 - h. End of life support.
4. We often help families in crisis situations and help relieve pressures associated with the caring role. Our constructive and innovative work assists with a reduction in hospital admissions and often prevents the breakdown of care settings at home. We are a network partner of Carers Trust and work closely with them to respond to national trends within the care field.
5. With the sum of £65,000 in 2015/16 from West Berkshire Council we have been able to support over 77 children and hundreds of associated siblings and family members. With this funding we have provided vital respite and support services for children and young people, helping with social and educational activities, sitting services, music therapy groups and emergency support. The children we support often have complex needs with both behavioural and emotional complications.
6. The children and young people we care for have varying issues, including those living with:
- a. Autistic Spectrum needs;
 - b. Special Needs;
 - c. Behavioural issues;
 - d. Terminal illnesses; and
 - e. Social deprivation.
7. The First Claimant uses our short breaks services: he attends our weekend and holiday activity days and enjoys trips away that we organise during school holidays.
8. The response to our children and young people's service has been overwhelmingly positive. Families have expressed great joy at having their children engaging in social activities and support, proving beneficial with regards behaviour and general happiness. Combating social isolation for children and young people with care needs is a major focus of the work we do.

Families have also expressed how amazing it is to have a rest or break from their caring role. Such breaks help parents and guardians to spend time with their other children, helping to reduce tension within the home.

Effect of the cuts on our Children Services

9. Without funding from the Council, we have no funds to provide the level of care we have previously because we have no alternative source of funding currently.
10. We informed our service users as soon as we became aware of the proposed cuts to our funding and explained that our services would have to end. Naturally, there was a lot of upset, worry and negative feedback. The overwhelming response from our service users is panic around how they are going to cope without having any support – as they have no other support available to them. We explained to our service users the timescale for the cuts and also who to contact to discuss these issues, but this did not allay fears as the services Crossroads provides are trusted services, which have taken time to build. Many families have become deeply anxious as they fear a breakdown in family units as the stress of the caring role, with no support, could become too much.

Communication with the Council

11. We see that the Defendant says in its formal response to the Claimant's letter before action that it has "*not been made aware*" by providers that services may have to cease to exist due to the cuts. This is not correct. We have attended meetings with the Council and clearly expressed our concerns that without funding our services will cease.
12. We could not attend the meeting with the Council on 30 November 2015 and so we met separately with officers on 4 December 2015. A short note by the Council of this meeting is in the Court Bundle at D51. During this meeting we explained our deep concerns about the impact on families of the cuts.
13. We responded to the consultation online (and were not sent an electronic copy). I recall that we explained in our response the feedback we had from families about how important our services are to them, that families can reach a crisis point without proper short breaks, and that these cuts would put our services under threat.
14. I attended the meeting on 4 February 2016 with the Council and providers and expressed the difficult situation that providers are in. I said that we need certainty to be able to confirm to families what services we are and are not going to be able to provide. I said that providers weren't seeing the bigger picture because they all provide different types of services. The Council was encouraging us to consider working in partnership with one another, but effective partnership working will be difficult given how different our services are. In any event, it is the Council's job to

have the big picture and ensure that there is the necessary variety of services to meet needs across the borough.

15. I attended the further meeting with the Council and providers on 15 March 2016, and although there are no comments recorded in the Council's minutes by me, I also made it clear during this meeting that our services will cease without adequate funding. This is the bottom line for us and I have repeatedly made it clear to the Council that this is the ultimate consequence of the cuts to our funding.
16. We have been clear throughout this period that Crossroads is dependent on the funding by the Council and our services will cease without it. We have recently informed the Council that, without the benefit of full funding, we will be cutting our holidays and short breaks services from May 2016.

Outcome of transitional funding grants

17. We received notice on 21 April 2016 that we have been only partially successful in our applications for transitional funding grants. We made two separate applications for £20,000 each (a total of £40,000), one to fund our short breaks programme and one to fund our activities programme for one year, which was the most we could apply for under the Council's guidelines.
18. The Council has decided to award us £15,000 for our short breaks programme and £12,000 to fund our activities programme (a total of only £27,000). Given that our funding by the Council last year was £65,000, this means we have lost £38,000 in funding this year, which is a cut by 58%.
19. Whilst we are extremely grateful for any financial support we have, the limitations in our funding will mean the amount of families we can assist will have to drop by around approximately 40%. We continue to engage in additional ongoing fundraising to try to make up the huge shortfall but as yet we have not secured any additional funding.

Provision across the borough

20. In our view, the Council did not properly assess its provision of services across the borough in order to determine whether there would be enough services remaining after the cuts to meet children's needs. We have worked closely with the Council, even before the consultation process, to try to explain what the impact on our services would be if the cuts went ahead as planned and to explain what a devastating impact it would have on the children we support. We provided information about the nature of our services, the numbers of children we provide services to, and what sort of needs they have. However, we cannot see that the Council really processed this information and used it as part of an exercise to review its provision. We think this is a real failure because it is a leap in the dark – these cuts are going ahead without the Council having any idea what services will be left afterwards, and without any idea how children's needs will be met, and

without any idea how many children will be left without support. This isn't good enough because the wellbeing of a lot of disabled children and their families are at stake.

The importance of our short breaks services

21. At MR1 I exhibit a number of emails by families who wrote to us to express how important the services we provide are to their families. They wrote these emails in order to support our services continuing but we have anonymised them in any event.

22. These emails show that the services we provide are a lifeline of support to people with care needs. We help to build authentic social capital, that in the long-term saves the Council money because it keeps families together, improves behaviour, and makes for a more stable and caring society.

Statement of truth:

I believe that the facts stated in this Statement are true.

Signed: _____

Mary Rainford

Dated:

THE HIGH COURT OF JUSTICE
ADMINISTRATIVE COURT

CLAIM NO: _____

IN THE MATTER OF A PROPOSED APPLICATION FOR JUDICIAL REVIEW

BETWEEN:

THE QUEEN

on the application of

[REDACTED]
(via his mother and litigation friend [REDACTED])

First Claimant

-and-

[REDACTED]
(via her mother and litigation friend [REDACTED])

Second Claimant

-v-

WEST BERKSHIRE COUNCIL

Defendant

WITNESS STATEMENT OF CHRISTINE LENEHAN

I, Christine Lenehan, Director of the Council for Disabled Children, 8 Wakley Street, London, EC1V 7QE, will say as follows:

1. I make this statement on behalf of the Council for Disabled Children (the "CDC") in support of the Claimants' application for judicial review. I am well known for my work in this field and have had a successful career in championing the rights of disabled children and their carers. I qualified as a social worker in 1980 and have always worked in disabled children's services. I have managed and developed short break services for a number of years and provide national and international advice on their development and delivery. I was a member of the expert working group on the Children's National Service Framework module on disabled children and was responsible for the development of its consultation programme. I sat on the advisory group for the publication "Improving the life chances of disabled people", issued by the Prime Minister's Strategy Unit in January 2005. I have held a number of strategic roles, including being a member of the Stakeholders Group, which worked on the implementation of "Every Child Matters", the Ministerial Implementation Group for "Implementing Aiming High for Disabled Children", and the Programme Board overseeing "Aiming High for Disabled Children". In 2009 I was awarded an OBE in recognition of my work with disabled children and their families for over thirty years. In 2012, I was appointed a member of the Healthwatch England committee. I recently co-chaired the Children

and Young People's Health Outcomes Forum, which lead the development of the Children and Young People's Health Outcomes Strategy. In 2013, I was awarded an Honorary Fellowship of the Royal College of Paediatrics and Child Health my work advocating the rights of children, including disabled children, across the health system. I also acted as a board member of the Every Disabled Child Matters (EDCM) campaign.

2. I am currently the Director of the CDC and my role is to manage the direction and strategic development of the CDC team. The CDC is the umbrella body for the disabled children's sector in England, with links to other UK nations. We are the only national body that brings together the diverse range of organisations that work with and for disabled children to support the development and implementation of policy and practice. Our work impacts on over 800,000 disabled children and their families. I have overall responsibility for CDC as the direct line manager of key staff and as a senior manager within the National Children's Bureau. On a day to day basis this means linking with ministers and civil servants, all levels of staff working within statutory agencies, colleagues across the wider voluntary sector, and most importantly parents and children and young people.
3. Unless otherwise stated, the facts and matters referred to in the statement are within my own knowledge derived from my professional experience and are true to the best of my knowledge, information and belief. Where they are not within my knowledge, the source of my information is identified.

The importance of short break services to disabled children

4. The status of short breaks as a fundamental service to support families with disabled children to lead ordinary lives is beyond dispute. In October 2006, a set of cross party parliamentary hearings was conducted by Rt Hon Tom Clarke MP and Joan Humble MP, supported by the disabled children's charities CDC, Contact A Family, Mencap, and the Special Educational Consortium. This inquiry found overwhelming evidence for the positive impact of short breaks for families with disabled children and identified a lack of access to these services as the single biggest cause of unhappiness with service provision.¹
5. It is not hard to understand why short break services are so highly valued by families with disabled children. Over 10 years, successive Mencap surveys have found in the region of 80 per cent of parent carers of children with learning disabilities say they have reached or are close to reaching a "breaking point"; a moment of emotional, psychological or mental crisis where they feel

¹ *Parliamentary hearings on services for disabled children*, Rt Hon Tom Clarke MP and Joan Humble MP (2006)

they can no longer cope with their caring responsibilities.² Short break provision gives families a break from care duties and allows children to experience new relationships, environments and positive activities. The benefits to children, young people and their families are profound.

Aiming High for Disabled Children

6. However, prior to the Parliamentary hearings in 2006, gaining access to support through short break services was extremely difficult. A key theme that emerged in the hearings was that families with disabled children were forced to fight to get access to the right services for their child and the support that would allow their family to function. In particular, the inquiry identified a serious lack of short break provision as the leading priority for families with disabled children. Parents complained that provision was simply not available until they could no longer cope.
7. The Government responded to the findings of the Parliamentary hearings with the "Aiming High for Disabled Children: Better Support for Families" report, which formed part of the 2007 Comprehensive Spending Review. This committed £340 million revenue funding between 2008 and 2011 to transform local authority services for disabled children, with £280 million specifically allocated to expand the types of short break services available and increase accessibility to disabled children, young people and their families. This grant was intended to make provision for an additional 40,000 fortnightly short breaks between 2008-11.
8. In December 2008, the Children's Plan committed an additional £90 million local authority capital funding for short break services from 2008 to 2011, bringing the funding allocation for short breaks to £370 million. In addition, the Department of Health's 2009 Child Health Strategy 'Healthy lives, brighter futures' announced that £340 million of Primary Care Trust baseline funding for 2008/09 to 2010/11 should be allocated to disabled children to be spent on short breaks, community equipment, wheelchairs, and children's palliative care.
9. The Government and EDCM (the Every Disabled Child Matters campaign, hosted by CDC) undertook research to assess the impact of this unprecedented investment in short break services and both found significant achievements, although these were unevenly spread across the country. The most important achievement for families with disabled children was the much greater levels of provision that allowed local authorities to move away from a crisis model, where residential short breaks were provided to a low volume of children at high cost, to a preventative model where far greater numbers of families benefited from provision that was more responsive to their needs and cheaper to provide. In many areas, this move was facilitated by the development

² *Breaking Point reports*, Mencap (2003, 2006, 2013), available at: http://www.mencap.org.uk/sites/default/files/documents/2008-04/campaigns_breaking_point_0408.pdf

of self-referral models that allowed families to access provision without having to undertake social care assessments, which were typically required only for the most intensive interventions. These models were popular with many parent carers because they enabled families to receive services more easily and empowered them to meet their own needs through the available provision. They led to key developments within the voluntary sector and a recognition that innovation in short breaks was often provided beyond a statutory sector response.

10. Despite the funding won under AHDC, EDCM considered it essential to campaign for stronger rights to regular, reliable, and appropriate short breaks for the disabled children and their families who needed them. To this end, EDCM lobbied the Government on the passage of the Children and Young Person's Act 2008 to include the duty to provide short breaks. This duty was necessary to embed in law the move towards a prevention model that supports parent carers to fulfil their caring role and avoid reaching a crisis point.
11. The passing of a specific legal duty to provide these services was also necessary to ensure the sustainability of short break provision beyond the life of the ring-fenced AHDC funding. Concerns about sustainability were shared by some of those working within the AHDC programmes as well as by parents and were borne out by the fact that in many areas funding ear-marked for short breaks through PCT funding was not dedicated to this purpose. EDCM's research later revealed that some areas began making cuts to provision even before the end of AHDC funding, despite the passage of the short breaks duty.³
12. The Breaks for Carers of Disabled Children Regulations 2011 responded to these concerns by setting out the range of short break services that must be provided. An additional £800m was announced in December 2010 by the Department for Education (DfE) explicitly to continue investment into Short Break Services, as well as £40m capital investment in 2011-12. This continued investment in short breaks was made available through the Early Intervention Grant (EIG) for four years, allocated in sums of £198m / £202m / £206m / £210m between 2011/12 and 2014/15.⁴
13. The EIG brought together a range of ringfenced and non-ringfenced funding streams into a single non-ringfenced grant for children's services not included in the Dedicated Schools Grant (DSG). However, there has been dissatisfaction with how the EIG has distributed funds to local authorities. According to the Local Government Association, the total EIG represented a 32 per

<http://www.mencap.org.uk/sites/default/files/documents/2008-03/Breaking Point Families still need a break.pdf> and http://www.mencap.org.uk/sites/default/files/documents/Short_Breaks_report.pdf

³ See the Report by EDCM entitled "Short Breaks in 2015: An uncertain future":

<http://www.edcm.org.uk/media/162179/short-breaks-in-2015-an-uncertain-future-final.pdf>

⁴ *Government announces £800 million to support families – press release*, Department for Education (11 December 2010), available at:

<https://www.gov.uk/government/news/government-announces-800-million-to-support-families>

cent budget cut compared to all the previous grants that it replaced.⁵ The EIG was subsequently transferred into the Business Rates Retention (BRR) system from 2013-14, with funding for expanding early education for disadvantaged children taken out of the EIG and transferred into the ringfenced DSG that amounted to £534 million in 2013/14 and £760 million in 2014/15.⁶ In addition, a 'top-slice' of £150m per year was retained by the DfE⁷ and later allocated back to local authorities as specific non-ringfenced grants including the special educational needs reform grant of £70m in 2014/15.⁸ The DfE explicitly committed funds to local authorities for the purpose of sustaining short breaks services.

14. Elizabeth Truss MP, the then Minister for Education and Childcare, in responding to a Parliamentary Question in January 2014 stated that funding for early intervention through the EIG (and subsequently BRR system), DSG and DfE funding through its 'top-slice' had actually increased funding from £2.2 billion in 2011-12 to £2.5 billion in 2014-15 despite complaints by local authorities of increasing budgetary pressures caused by these changes.⁹ The changing parameters around these funding streams for children's services has obscured the explicit intention of additional funds granted to local authorities over this period to sustain the development of short breaks services.
15. In terms of recent spending by local authorities on short breaks, according to the research by EDCM¹⁰ there was a huge variation between local authorities. The average cut for the bottom quartile of local authorities on the short break spending index was 26% between 2011/12 and 2015/16. The average spending increase for the top quartile was also 26%. This shows many local authorities have worked hard to protect spending on short breaks in a challenging financial climate.

West Berkshire Council

16. I note that in this case, West Berkshire Council has drawn a distinction between its funding for what it calls the "Aiming High" voluntary sector providers, such as West Berkshire Mencap, the NAS, and Crossroads, and its "core funding" for children's services. In its formal response to the First Claimant's letter before action it said:

⁵ *Early Intervention Grant briefing*, Local Government Association (2012): http://www.local.gov.uk/briefings-and-responses/-/journal_content/56/10180/3736125/ARTICLE

⁶ Ibid.

⁷ Ibid.

⁸ *Timpson creates SEN funding pot from early intervention grant*, Children and Young People Now (2013):

<http://www.cypnow.co.uk/cyp/news/1141041/timpson-creates-sen-funding-pot-intervention-orant>

⁹ Elizabeth Truss, 6 Jan 2014 : Column 89W

¹⁰ Page 3 of report by EDCM entitled "Short Breaks in 2015: An uncertain future": <http://www.edcm.org.uk/media/162179/short-breaks-in-2015-an-uncertain-future-final.pdf>

- *"...the short breaks budget/contracts in question are a relatively recent phenomenon, originally commissioned by the Council pursuant to central government's Aiming High for Disabled Children initiative (2008—11), when central funding was provided to councils to develop and increase short breaks for disabled children at an earlier point of need and to far greater numbers than previously (for convenience, this provision will be referred to "Aiming High short breaks provision", although the description is no longer completely accurate);*
- *central government ring-fenced funding ceased in around 2012/13 and, not only that, central government has required the Council to make very substantial budgetary savings out of its general funds... ..Notwithstanding the total cessation of ring-fenced central government funding for Aiming High short breaks provision, and the budgetary pressures on its general funds, the Council has continued to fund Aiming High short breaks provision through a number of contracts and there will continue to be some funding available in 2016/17..."*

17. It appears to me that the Defendant has misinterpreted the Government's intention regarding the Aiming High Funding. While the funding came through a ring fenced grant, the Government's intention was to raise the provision of short breaks to a point where it met agreed needs. Within the final year of Aiming High ring fenced funding we saw the introduction of the Regulations and the Short Breaks statement which made clear to local authorities and to parents the Government's intention that local provision should continue.

18. It is important to note that the Defendant's distinction between "Aiming High short breaks provision" and "core" provision is inaccurate as these provisions carry the same statutory intent and, in essence, Aiming High just acted as a pump priming mechanism to build local authority capacity. The fact that in some areas this short breaks provision was then provided by the voluntary sector is irrelevant. There is no difference in these types of funding, as the Regulations were passed with the Parliamentary intention of sustaining short breaks provision established by Aiming High. In my view, the Defendant's approach to this issue, by describing services as core and non-core and focussing on the "total cessation of ring-fenced central government funding", is misguided.

19. Finally, I understand that the Defendant has attempted to defend the cuts it is making by confirming that it will meet the assessed needs of children in the borough. In my view, it is not appropriate for local authorities to be focussing solely on meeting assessed needs in this way. There is now a policy imperative to reduce the emphasis on assessments of disabled children's needs. The overall cost of conducting assessments is high, and short breaks services are intended to bring down the number of assessments and by providing generic services available to

all disabled children and by preventing needs from escalating to the point that an assessment is needed.

20. Short breaks are an essential part of living for families of disabled children. They enable the basis of an ordinary life and are a key part in promoting the best outcomes for children and to prevent family breakdown. The Government recognised this through the Aiming High Programme and encouraged local authorities to be flexible and innovative in designing and commissioning provision to meet these needs. The voluntary sector programmes under threat by the cuts in this case are examples of short breaks services that, provided they are there for the long term, are invaluable to maintaining family lives.

Statement of truth:

I believe that the facts stated in this Statement are true.

Signed: _____

Christine Lenehan

Dated: