Understanding DLA for Children Over 5: How Case Law Protects Your Child's Right to Support

As your child grows older, it can sometimes feel like the system expects their difficulties to "fade away" — as if turning 5 means they suddenly stop needing the extra care, supervision, and patience you've always provided.

But for many neurodivergent or disabled children, the challenges simply **change shape**. They might look more independent on paper, but still need constant prompting, supervision, reassurance, or help to stay safe, regulated, and engaged in daily life.

The good news is that the **case law around Disability Living Allowance (DLA)** recognises these ongoing needs — even as children get older. Here's how tribunals and decision-makers are guided to view care, supervision, and mobility for children **aged 5 and above**.

1. Ongoing Supervision and the Meaning of "Continual"

Case: R(DLA) 1/08
If a person's condition gives rise to a **non-remote danger** to themselves or others, and they require **continual supervision** to avoid that danger, they meet the legal test for supervision needs.

"Continual" doesn't mean constant; it means that supervision is **regularly required** and **reasonably necessary** to prevent harm.
For older children, this often means being nearby, watching for warning signs, and stepping in before a situation escalates — whether that's a meltdown, risk-taking behaviour, or impulsivity.

Case: R(A) 3/92
The law makes clear that supervision doesn't need to **eliminate all risk**. The goal is to **reduce danger** — not create a perfect, risk-free environment. Parents can't prevent every incident, and the DLA rules don't expect you to.

2. Behavioural and Emotional Regulation

Case: CDLA/943/2011
The need for another person to intervene doesn't have to be constant, but it must be **frequent, predictable, and necessary**. For instance, if your child's emotional dysregulation regularly leads to aggressive outbursts, bolting, or withdrawal, that qualifies as supervision need.

Case: CDLA/2054/1998
The purpose of supervision or restraint is to **prevent injury or damage**, not to wait until it happens. You don't have to show that harm has already occurred.

Case: CDLA/17611/1996
Severe behavioural problems aren't confined to outdoor situations. Children can be unpredictable anywhere — at home, at school, in public — so the supervision requirement applies indoors as well.

Case: R(M) 3/86
If behavioural problems arise from a **physical or neurological source** (for example, autism, ADHD, sensory processing difficulties), they are recognised as legitimate care needs. Behavioural difficulties don't have to be "bad behaviour" — they can be symptoms of underlying conditions.

3. Emotional and Sensory Fatigue

Case: R(DLA) 4/98 and **CDLA/1832/2002**
"Severe discomfort" isn't limited to pain. It includes **anxiety, fatigue, distress, or sensory overwhelm**. For older children, this could mean exhaustion after social situations, shutdowns following school, or distress from noisy or unpredictable environments.

Case: CDLA/3896/2006
Tribunals must consider both the **discomfort during an activity** (like walking or travelling) and **after-effects** such as shutdowns, meltdowns, or needing recovery time.

4. Lack of Awareness of Danger

Case: CDLA/325/2001
If a child has **no sense of danger**, it's evidence of a significant impairment of awareness or intelligence. The law doesn't compare your child to a "typical" peer — it looks at their own understanding of risk.

A 9-year-old who walks into the road, climbs unsafely, or trusts strangers still meets the same legal tests as a 3-year-old who needs close supervision — because **awareness of danger** hasn't developed in the usual way.

5. Watching When Awake — Indoors and Outdoors

Case: R(DLA) 7/02
"Watching when awake" includes **being indoors** and keeping a close eye on the child's safety, emotions, and behaviour. It's not limited to walking outside or in public.

For children over 5, this often looks like a parent staying nearby to manage emotional outbursts, prevent self-injury, redirect behaviour, or prompt personal care tasks.

Case: 12(6)(c)
Tribunals focus on the **unpredictability** of behaviour that gives rise to a need for a

person to be **present and watching when awake**. If you regularly need to step in, restrain, calm, or distract, that supervision need is valid.

6. Severe Discomfort and Independence Expectations

Case: CDLA/19/1994
Decision-makers must establish the distance or duration a person can walk **without severe discomfort**, not what they can achieve under pressure or with persuasion.

Case: CDLA/14594/1996
Tribunals must look at the **nature of the discomfort** that causes the person to stop — whether that's physical pain, anxiety, or overwhelming fear.

Case: CA/14336/1996
They must also consider how **reasonable** the coping strategies are. If a child uses stimming, headphones, or a comfort object to manage distress, these are aids — not signs they don't need help.

7. Structured Environments and Masking

Case: R(A) 6/81
Even if a child behaves well in structured settings (like school), decision-makers must consider what happens **without that structure**. Would they still display behaviour requiring intervention?

This is crucial for neurodivergent children who **mask** at school — appearing calm but releasing distress once home. The law says this still counts. It recognises that the need for support doesn't disappear just because a child holds it in for a few hours.

8. Reducing Risk — Not Removing It

Case: R(A) 3/92
Supervision doesn't have to remove danger completely — it's enough that it **reduces the risk** of harm.
Parents aren't expected to achieve perfection; they're expected to provide appropriate, consistent supervision.

Case: CDLA/2054/1998
There's **no requirement** that harm would inevitably occur without supervision — just that it's **reasonably likely** enough to need prevention.

9. The Role of Medical and Daily Evidence

Tribunals and decision-makers should always rely on **specific evidence about your child**, not general assumptions.
For example, if your child has epilepsy, autism, or PDA (Pathological Demand Avoidance), the key question isn't their diagnosis — it's how those conditions affect their day-to-day safety, independence, and comfort.

You can strengthen your DLA claim by providing:

- School or therapy reports that describe supervision levels
- Examples of incidents or close calls that show why watching is needed
- Descriptions of what happens when structure or support breaks down

10. The Big Picture: Supervision, Safety, and Emotional Regulation

For children over 5, **independence expectations rise**, but that doesn't mean needs vanish.
If your child:

- Still needs one-to-one supervision at home or school
- Requires regular calming, redirection, or de-escalation
- Can't recognise danger or self-regulate emotions
- Needs help coping with transitions, sensory input, or social situations

Then their supervision and care needs remain significant — and the law supports that.

Final Thoughts for Parents and Carers

When your child turns 5 or starts school, you might be told that their extra help is just "good parenting."
But the case law shows otherwise: if your child still needs **substantial supervision, prompting, or intervention**, those needs are real and recognised under DLA.

Don't downplay the support you give — describe it. Write about the things that aren't typical for other children their age: the constant watching, managing meltdowns, or guiding through daily routines.

The law is on your side.