



## WHAT CAN YOU DO IF YOUR CARE PACKAGE IS REDUCED

### What can I do if the council reduces my care package?

There have been serious cuts in council funding in recent years, and most councils are looking to make savings anywhere they can, including in social care spending. Sometimes this may be both reasonable and lawful, sometimes it may not.

Before reducing the care package, the council must carry out a full reassessment of your needs, taking into account all relevant information.



**It is very important that you make sure the officer carrying out the assessment fully understands your needs: if in doubt, spell it out!**

[Click here to read more about preparing for an assessment of your needs.](#)

#### Step 1 – talk to them

Under the Care act 2014, if, following an assessment or a review, the council has decided not to meet one or more of your needs, or to reduce your care, it must give you a written explanation of the reasons for its decision.

#### Step 2 – make sure you have a full explanation

Under the Care act 2014, if, following an assessment or a review, the council has decided not to meet one or more of your needs, or to reduce your care, it must give you a written explanation of the reasons for its decision.

If the reassessment shows that you have the same eligible needs as before, but the council still say they will reduce your care package, without giving adequate reasons:

- **Insist on a written explanation of why they are reducing your care, and how it can adequately meet your needs.**

If the reassessment says that some of your needs are no longer eligible (or if it just doesn't mention some of them), and they were eligible needs in the previous assessment, but there is no explanation of why the needs have reduced:

- **Ask for a written explanation of why your needs have reduced**

Their reasons do not need to be long or complicated, but they must make sense, and give you something to argue against.

The law gives councils a duty to assess needs, and the power to decide

which of your needs are “eligible needs”. If councils decide needs are eligible, and those needs are not being met, then councils have a duty to meet those needs.

[Click here to read more about the law about what makes needs eligible.](#)

The [Care Act statutory guidance](#) says that reviews “must not be used to arbitrarily reduce a care and support package ... as the personal budget must always be an amount appropriate to meet the person’s needs. Any reduction to a personal budget should be the result of a change in need or circumstance.” (paragraph 13.33 in [chapter 13](#))

### Step 3 - consider their reasons

A council **cannot** lawfully:

- refuse to meet needs which are still treated as eligible in your current assessment or care plan/support plan
- provide a service which is clearly not adequate to meet needs which they have agreed are eligible
- refuse to meet certain kinds of need at all, e.g. shopping, house work, support for leisure activities, social activities, education, training, work, etc., without assessing whether or not these are eligible needs
- make a decision without weighing up all the relevant facts, which includes the information you give them and your reasonable preferences
- make any decision on purely financial grounds, without considering other relevant factors
- overrule the professional judgement of the officer who carried out the assessment with you, without good reason
- reduce your care package without a full reassessment of your needs
- have a panel or a manager over-rule the professional judgement of the officer who carried out the actual assessment with you, without good, clear, lawful reasons for doing so
- make decisions which are completely unreasonable

However, they **can** lawfully reduce packages if they can show that it is true that:

- Your needs have **actually** reduced
- Your needs are now being met by other means, without need for council involvement (but if your needs are being met by an unpaid carer, the carer must be both willing and able to continue doing this)
- They made a mistake, or they were “over-generous”, in the assessment last time, and the reduced care package meets your needs in a reasonable way
- They have found a cheaper, but adequate, way to meet your needs (after properly considering your preferences etc.)

When they make their decisions, councils are allowed to take cost into account, but they must weigh this up against other relevant factors, including your reasonable preferences, and meeting your needs effectively.

So, for example, they can provide the cheaper of two adequate services, but they cannot provide a cheaper service which is not actually sufficient to meet your needs. Government guidance for England gives an example of somebody getting a direct payment which costs nearly half as much again as the council-commissioned service they were offered, but the direct payment service allows the user to get support at the times when they need it, rather than the times which suit the care company: this is presented as being better value for money, even though it costs more (after paragraph 11.28 in **Chapter 11, Care and Support Statutory Guidance (2014))**).

However, councils do not necessarily have to provide the service you want. As long as they have properly considered your preferences, and any other relevant facts, the law gives councils the power to decide how best to balance these factors against managing their limited budgets to meet a range of needs for the whole community.

### **Step 4 – make a formal complaint**

If your council has their own local appeals system for social care assessments, you may wish to use this before you complain. Otherwise, the complaints system is the main legal provision for challenging a local authority decision, so you should not be afraid to use it. If you complain, the council must investigate, respond to you, and keep a record of the complaint.

- Write or email the council, stating that this is a complaint, explaining what you are unhappy about and why, and saying what outcome you hope to achieve by complaining
- If you think their decision is unlawful, &/or your eligible needs are not being met, you should explain why
- Consider copying in the director of adult social services (you can find them [here](#)); and your MP (find them [here](#)); and also asking for the email/letter to be copied to the legal team and the Monitoring Officer. Each local authority has a Monitoring Officer (usually the head of the legal team), who has a duty to investigate and correct any unlawful practice by the authority.

### **Step 5 – Further possible legal remedies**

#### **The Local Government Ombudsman (LGO)**

- The LGO can investigate “maladministration” or service failure which leads to injustice: “maladministration” covers a wide range of improper conduct by a council
- The LGO only looks into a tiny proportion of the complaints referred to them; nevertheless some of our members have made successful complaints to the LGO

- Has the power to require documents and interview those involved; this sometimes reveals, for example, that a decision was actually finance-led therefore unlawful
- Makes recommendations to the council, sometimes including awards of compensation; councils usually follow the LGO's recommendations
- You should normally have been through complaints process before you contact the LGO, unless there is good reason not to do so
- You can contact the LGO up to 12 months after decision, or longer in special circumstances

### Judicial review

- Judicial review takes place in court before a judge. It looks at whether the council has followed the correct procedures, considered the right evidence and come to a rational conclusion.
- It can be expensive, although legal aid may still be available, if your income and savings are low enough and your case is strong enough
- You must normally apply within three months of the decision
- Only 1.6% of applications do reach court, and this can take a long time
- If you have a strong case for a judicial review, there is a very good chance the council will change their decision before it reaches court

### Further help

Contact Simon Legg at SIA's Social Care Advice Service on [07535 774135](tel:07535774135) or [s.legg@spinal.co.uk](mailto:s.legg@spinal.co.uk), or via the SIA Advice Line, if you need further advice or information.

Luke Clements has [an online page of information on "Challenging Reductions in Care Services"](#) ([click here to go to the page](#)), which includes links to relevant legal judgements and Local Government Ombudsman reports.

There is also a longer, more general guide to ["Using the Law to Fight Cuts"](#) ([click here to go to the paper](#)), by Steve Broach and Kate Whittaker.

Please note that the papers by Luke Clements, Steve Broach and Kate Whittaker are pre-Care Act, but remain broadly correct.

### Disclaimer

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## ABOUT SIA



The Spinal Injuries Association (SIA) is the leading national user-led charity for spinal cord injured (SCI) people. Being user led, we are well placed to understand the everyday needs of living with spinal cord injury and are here to meet those needs by providing key services to share information and experiences, and to campaign for change ensuring each person can lead a full and active life. We are here to support you from the moment your spinal cord injury happens, and for the rest of your life.

For more information contact us via the following:

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**T:** 01908 604 191 (Mon – Fri 9am – 5pm)

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**W:** [www.spinal.co.uk](http://www.spinal.co.uk)

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**SIA relies on fundraising, donations and gifts in wills to provide services that help spinal cord injured people rebuild their lives.**

With your help, we can provide the right support to spinal cord injured people and their families and friends so they can enjoy a full and independent life after injury. Your donation today will go towards changing someone's life.

I would like to give: £15 ☐ £20 ☐ £53 ☐ other amount £.....

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