



# Social care and support

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## Capping or rationing: carers short breaks

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Councils must meet the eligible social care needs of disabled people and their carers and the duty to meet eligible needs is one that exists regardless of any resource problems a local authority (LA) may have.

The fact that a LA has wider financial problems or uses its own locally designed Resource Allocation System to calculate a person's weekly personal budget or allocation of support **isn't a lawful reason to cap.**

**Simply put, eligible needs must be met and support cannot be cut unless there is strong evidence as to why it is no longer required.**

LAs cannot adopt one size fits all policies or ceilings on the cost of a person's care or its availability...for example, saying that they only provide a maximum of four weeks' respite care a year for everyone. In legal terms this unlawful behaviour is called '**fettering of discretion**' (a public authority must not fetter its discretion by applying a rigid or one-size-fits-all policy to all.)

Because LAs must meet the eligible needs of disabled adults and their carers it is simply unlawful for authorities to impose set limits on what they are prepared to pay for short breaks packages (as every carer is unique and has needs that are personal to them).

This means that eligible needs for carers must be met regardless of the cost.

As the Statutory Guidance to the Care Act explains, an LA's finances are relevant when it decides **how** to meet the eligible needs of an individual 'but not **whether** those needs are met' (para 10.27). The guidance explicitly says (Detailed in section 1 Care Act 2014) that LA's '*should not set arbitrary upper limits on the costs [they are] willing to pay to meet needs through certain routes*'.

**LAs must also not assume that a carer is willing or able to provide any care** (including additional care arising from a reduction in the care package).

It will be maladministration for such a reduction to occur without assessing the carer and explicitly clarifying and recording in the assessment whether a carer is 'able and willing' to provide the additional support (for further details see [Complaint no. 15 020 384 against London Borough of Bromley 7th September 2016](#) and see also [Complaint no. 15 006 613 against Sheffield City Council 17th March 2016](#)).

Any indicative personal budget that is provided to the carer must also be transparent and explicit in how it was arrived at and how it meets their eligible assessed outcomes. There is also no such thing as 'natural' support – and an '*informal carers*' willingness as well as their ability to do what they have been doing or might do if asked, must not ever be assumed by the LA.

A 2016 ombudsman report ([Complaint no 15 013 201 against Sefton Metropolitan Borough Council 23rd August 2016](#)) concerned an adult with significant learning difficulties who lived with his parents. His care package had for many years included 50 days of replacement care to enable his parents to have a break. On review this was reduced to 14 days although his needs had not changed and the sustainability of his parents in maintaining their support was recorded as at risk.

In finding maladministration the ombudsman held that the council had to provide an explanation as to the reasons for the reduction: that it '*needs to show what circumstances have changed to warrant this reduction in respite provision*'. In the ombudsman's opinion it was not acceptable for the council to state that it would offer emergency respite if the need arose as the parent's need for '*weekends away and a little social life were not emergencies but part of a planned sustainable support regime*'.

The Council's assessment did not address these sustainability issues and the guidance says the impact on the carers' daily lives and non-caring activities should have been included.

**This is a critical point and an area for carers to challenge LA's if they feel that the personal budget or short breaks package offered will create a negative impact on their daily lives and for example on their ability to work and to hold down steady employment.**

## We can help

If you have any questions about social care, please contact us using Tel: 0333 1212 300 or Email: [info@downs-syndrome.org.uk](mailto:info@downs-syndrome.org.uk). If our information officers are unable to help, they will refer you to our social care adviser.

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