



counsel + care 
for older people, their families and carers

guide

Information from Counsel and Care: 12

Assessment and services from your local council in England

If you are experiencing difficulties because of a disability your local council social services department may be able to provide you with support and assistance. This system of support and services is known as community care.

This guide explains the community care system in England and your right to an assessment and services.

Counsel and Care is the national charity working with older people, their families and carers to get the best care and support. If you have found our service helpful, please consider making a donation or leaving a legacy in your Will. You can arrange either by telephoning 020 7241 8555 or using the secure service on our website www.counselandcare.org.uk.



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Your donations, legacies and payroll giving enable Counsel and Care to get the best care and support for older people, their families and carers

Counsel and Care is a national charity; however the creation of the Scottish Parliament, and the Welsh and Northern Ireland Assemblies means there are differences in the ways each country cares for and supports older people. The information in this guide applies to England although there may be similarities with Scotland, Wales and Northern Ireland.

We also produce five separate guides for both Scotland and Wales covering the community care assessment of need process; paying care home fees and making a complaint which are the key areas where the policy and legislation differ significantly to England. All of the guides we publish can be downloaded from www.counselandcare.org.uk/advice-and-information or posted to you by calling our guide orderline on 020 7241 8522.

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1 Community care support services

As people get older, it may be that they need some support to assist them to remain at home. Local council social services departments are responsible for making sure that vulnerable older people, those with disabilities, and their carers have the support they need. Social services can arrange for support services to be provided. These services are often referred to as community care services.

Support services may be provided directly by social services or arranged through other organisations, for example, private home care agencies or local voluntary groups, such as Age UK or WRVS. It is also possible to arrange your own care and support by using the Direct Payments scheme or using a 'personal budget'. This is where you are given an amount of money that you can decide to use in different ways to meet your needs rather than the council directly providing services. For more information about personal budgets, please see section 12 of this guide, and also our guide: **Home Care: using Direct Payments and personal budgets** (guide number 23).

Housing departments and health authorities may also provide services connected to community care. The collection of support services is often known as a care package.

2 Obtaining an assessment of needs

If you feel you need some assistance to manage your daily living tasks you should contact your local social services department and ask for a needs assessment. Other people, for example, a relative, carer, GP or nurse, can also contact social services and ask for an assessment on your behalf. They may want confirmation that you are in agreement with this. Details of your local council social services department can be found in your local library, GP surgery or local telephone directory.

Social services must assess anyone who appears to be in need of community care services. If you have a disability, social services have a duty to assess your needs regardless of whether they provide this service and regardless of the level of your income and capital. They should not ask you about your finances before a full assessment of your needs has been carried out other than to check that you are claiming all the benefits that you are entitled to.

When you contact social services you may be asked some basic questions such as your name and address, age, who your doctor is, your next-of-kin, the state of your health, and the difficulties you are having. If you are not personally experiencing difficulties, but are caring for someone who does, you are also entitled to an assessment. This is known as a carer's assessment. For more information, about carer's assessments see our guide: **Carers: what support is available** (guide number 10).

Social services should publish their local eligibility criteria detailing the level of needs they will meet, as well as information about the type of assessment that will be carried out. Some social services departments offer an online or 'self-assessment' in which you will be asked a series of questions about your needs (see section 2.1). If you are not able to manage this task you should still be given the opportunity to have a face-to-face needs assessment with a social worker.

2.1 Self-assessments

Many people are experts in understanding their care needs in the same way as a social worker does. As a result, the option of self-assessment has been introduced, to give older people more choice and control over the care they receive.

Some councils already offer the option of self-assessment. A self assessment may be available as a paper questionnaire or online on the council's website. If the assessment was completed online, you should receive an instant reply indicating whether you may be eligible for support. Sometimes, in more complex cases, the initial self-assessment will be followed by a face-to-face assessment with a social worker.

Self-assessments tie in with the current 'personalisation' agenda however personalisation and self-assessments are not provided for in legislation. Ultimately the council still has a duty to provide a face-to-face needs assessment for you with a social worker if you request this.

3 If you are refused an assessment

If you telephone for a needs assessment but are refused it may be because the local council social services department does not feel you are in need of any services that they provide. This may be because the person you spoke to did not ask you the right questions and was not fully aware of your needs. If this happens, it may be helpful to write a letter to social services explaining your circumstances in more detail. You may want to keep a copy for your own records. You can ask your carer, someone who knows you, an independent advocate or your GP to send in more information. It may be helpful to ask for a copy of your local council's eligibility criteria that they use to decide who is eligible for services.

If you are still not satisfied with the response from the council, you could consider making a complaint. For more information about doing this see our guide:

Complaints about Community Care and NHS services in England (guide number 18).

3.1 'Better Care, Higher Standards' Charter

The 'Better Care, Higher Standards' Charter sets national standards for social care, health and housing services. It states what levels of service and support people can expect from providers, and what they can do if they feel these standards are not being met. The charter is available from the Department of Health website:

www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4006375

4 Delay in getting an assessment

If you develop a very serious need, or your existing care arrangements have broken down, an urgent assessment of your needs by social services can be arranged by telephoning them directly. Alternatively, social services have the power to provide you with an emergency care package until a full assessment can be carried out by them. Once a full assessment has been completed, your care package might remain the same, be reduced or stopped.

There is no guidance that sets out the time-limit by when social services must complete an assessment of your needs from when you first contacted them. The length of time you wait will depend on your situation, on the volume of assessments that need to be prioritised in your local area, and whether you are able to carry out a self-assessment. Good practice guidance states that council social services departments should undertake an assessment within 'a reasonable time'. Many social services departments will have their own targets for carrying out assessments that are requested by telephone (see section 3.1 on the Better Care, Higher Standards Charter).

If the council fails to meet its own targets, or to assess you within a reasonable time, you can make a complaint. For more information about raising a complaint, see our guide:

Complaints about community care and NHS services (guide number 18).

5 A face-to-face assessment of your needs

The type of assessment you receive from your local council will depend on your needs. For example, if you are having difficulty preparing a hot meal, you may be assessed for this by a simple interview and then provided with Meals-on-Wheels as a service. If you have more complex difficulties, you will need a more detailed face-to-face assessment, sometimes known as a 'comprehensive assessment'.

5.1 Where does the assessment take place?

At this time, it is still the case that most types of assessment will be carried out in your own home, normally by social services staff (a social worker, care manager or designated professional). In some cases, your assessment may be carried out in hospital, in a GP's surgery or in the council social services office.

However, it is important to be aware that councils are increasingly offering self-assessments or assessments over the telephone. If you consider this to be inappropriate, you can request a face-to-face assessment or ask for a relative or advocate to be present during the telephone assessment to ensure that all your needs are taken into account. It may be helpful to write down in advance of the assessment a list of the difficulties you experience in your daily routine and any other areas or questions you want to bring up.

If you carry out a self-assessment in the first instance through the council website or over the telephone and it is decided that you

have complex care needs, you may have a follow-up face-to-face assessment and you can also request this.

5.2 What happens at the assessment?

A social worker, care manager or care assessor should coordinate your assessment. They should discuss your care needs with you to decide what support services you may require to meet your individual needs. Together you will look at what you are able to do and what you are having difficulties with, your health and your current living and care arrangements. You should be fully involved in the assessment process and able to state your preferences and choices.

Remember that your assessment of need is a chance for you to have your say. Again, as suggested for the telephone assessment, it may help to have written down in advance a list of tasks you have difficulties with or questions you want to ask. It is important to explain how you feel so that your views are included in your assessment (see section 7 for more details). For example, if you want to move into a care home or you want to live in a different part of the country, it is very important to make this clear during the assessment, explaining your reasons why.

The person who carries out the assessment should record what you have said about your difficulties and what you are able to do. The assessment will be used to decide what support you need and what services you will be offered. The assessment will look at the 'risk' of not providing you with services by measuring your actual care needs

against the descriptions of risk within the eligibility criteria i.e. substantial or critical care. It will also take into consideration any other support you receive at this time if you do have eligible care needs. With the work going on to put people at the heart of social care, planning should also take place during your assessment to identify the outcomes you want to achieve as a result of your care and support and how best you can use the resources available to do so.

The assessment should not cover financial matters, except to ensure you are receiving the correct benefits. Only if it is agreed that social services are to provide you with care and support, should you be asked about your income or savings. Social services are able to charge for the provision of services; however, this charge must be 'reasonable' (see section 13).

For information on the help and support which may be available in your local area, see our guides:

Health Difficulties: how to cope with changing needs (guide number 8); and

Help at Home: what may be available in your local area (guide number 14).

5.3 Who should be present at my assessment?

You can have someone with you during the assessment if you wish, such as a relative, friend, carer or an independent advocate. This may be particularly important if you have difficulty in communicating your views and wishes.

Other people involved in your care, such as a care worker, community nurse, sheltered housing warden, GP or medical specialist, may, with your agreement, also be involved. Occupational therapists and physiotherapists are also often involved to ensure that you can remain as independent as possible with recommended aids, adaptations or exercises. For information on aids and adaptations please see our guide:

Housing: adapting your home to stay independent (guide number 28).

If a partner or a friend is caring for you, they should be involved in the assessment of your needs, and both of you should have the opportunity to discuss any worries you may have. If you have a carer, he or she can also ask for their own assessment of needs, known as a carer's assessment, so that they can continue caring, but still be involved in activities outside of this role. For more information, see section 16 of this guide or our guide:

Carers: What support is available (guide number 10).

6 The Single Assessment Process

The Single Assessment Process (SAP) has been introduced so that you can expect to have only one assessment covering both your health and social care needs, rather than having duplicate assessments or repeating information to different professionals. Depending on your circumstances, your assessment may require input from a wide range of agencies, which might include the NHS, the housing department, the Pension Service and the Disability and Carers Service.

6.1 Domains (the different areas of your life)

All the different aspects of your life should be looked at during your needs assessment, including any psychological, emotional or physical care needs. These areas of your life are called 'domains' in the Single Assessment Process guidance to social services and health authorities. These areas of your life are assessed and the outcomes recorded by the social worker. This will form the basis for deciding what support you should be provided with. It is very important that all 'domains' are covered during the assessment. The following should be considered:

Your point of view

- Problems and issues in your own words;
- Your expectations and motivation.

Clinical background

- Any medical problems you have currently or in the past;

- Whether you have had any falls;
- Any medication you take.

Disease prevention

- Your blood pressure;
- Your weight and nutrition;
- The vaccinations you have had;
- Whether you drink or smoke;
- Whether you take regular exercise;
- Whether you have had regular cervical and breast screens.

Personal care and physical wellbeing

- Whether you can look after yourself;
- Whether you have any problems with your teeth and gums;
- Any problems with your feet;
- Any pressure sores or skin breakdown;
- Any difficulties with mobility;
- Any problems with continence.

Senses

- Whether sight or hearing problems cause difficulties.

Mental health

- Any mental health difficulties (such as dementia or depression);
- Problems with your memory.

Relationships

- The relationships you have and wish to maintain;
- The friends or people you see socially;
- Your carer(s) or someone who looks after you.

Safety

- Whether you have been abused or suffered from neglect;
- Any other problems with personal safety;
- Whether you are a threat to other people's safety.

Your immediate environment and resources

- Whether you are able to look after your home;
- Whether your accommodation is suitable;
- If you are in need of any advice about finances or welfare benefits;
- Whether you can get to the shops and other facilities and services.

Lifestyle choices

- Where you want to live;
- Your wish to maintain hobbies and interests.

7 The importance of your care plan

If it is decided, following your assessment, that you are to receive support services in your own home provided by the council, or you are to move into a care home funded by the council, you should be given a written care plan. The care plan should clearly state your individual needs, which includes your emotional, psychological, cultural, social and spiritual needs as well as your physical care needs. The care plan should also include details of how you will receive the support you need. If you are provided with a service, the plan should include who will provide this service along with contact details of the person to contact if you have a problem.

Your care plan should be agreed between you and the social worker. You should be able to raise any concerns you have and discuss with your social worker if you feel an amendment may be needed. Both you and the social worker should sign and date this care plan.

You have the right to receive a copy of your individual care plan. If you do not receive a copy, you should ask for one. If you feel that your care plan does not accurately reflect your care needs, you should raise this with the social worker. If issues remain unresolved, you can consider making a complaint (see section 8 of this guide).

8 Challenging the outcome of the assessment

If you do not feel that your assessment has covered all of your care needs, you can ask for a re-assessment of your needs which should look at the particular area that has been missed. If this is refused or you are still not satisfied, you could consider making a complaint.

For more information, see our guide:

Complaints about Community Care and NHS services in England
(guide number 18).

If social services decide that they will not be providing you with a service as you do not meet their eligibility criteria (see section 9), you remain entitled to a written statement of your care needs following the assessment.

If social services are not able to meet your need, they should record that this is an 'unmet need'. This is an important part of the assessment process, so that the council can develop services that do not currently exist. They should also record whether the need is unmet because of an acute shortage of appropriate services or whether the unmet need relates to you not meeting the required level of eligibility criteria.

9 Eligibility criteria

Each council sets its own eligibility criteria for the level of needs and the outcomes it is able to meet. This means provision of support can vary between areas, especially because each council has a different level of resources available.

Each council's eligibility criteria should be based on the revised Government guidance 'Prioritising need in the context of Putting People First – a whole system approach to eligibility for social care'.

You can view the guidance at:

www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_113154

The guidance outlines four levels of need based on the immediate and longer term risks to a person's independence and well-being:

- Critical;
- Substantial;
- Moderate; or
- Low.

According to the guidance, local councils should base their approach to meeting needs by prioritising meeting a person's identified outcomes rather than providing specific services. In this way, people living in the same council area should expect to get the same outcomes, based on their individual circumstances and aspirations.

The guidance advises that when assessing the risk, social services should focus on whether the person's needs prevent the following outcomes from being achieved:

- The autonomy and freedom to make choices and keep control over their lives;
- Health and well-being, including mental and emotional as well as physical health and well-being;
- Personal dignity and respect;
- Quality of life;
- Freedom from discrimination;
- The ability to make a positive contribution in family and wider community life;
- Economic well-being;
- Freedom from harm, abuse and neglect, taking in the wider issues of housing and community safety.

Increasingly local councils are restricting the number of people they provide services to. You may find that your council is only providing services to people who have critical or substantial care needs. This is because of funding pressures which mean that councils have to restrict the numbers of people who get support. The guidance says that councils should avoid using eligibility criteria as a way of restricting support to only those with the very highest needs. Instead, councils should consider focusing on preventative support to reduce the amount of people with higher needs at a later stage. Consideration should also be given to fluctuating and longer term needs, and identifying if intermediate care should be made

available (to increase what people can do for themselves) before an assessment is provided.

Councils should prioritise life-threatening circumstances or where there are serious safeguarding concerns. However, apart from these exceptions, risks to independence and well-being relate to all areas of life and one type of need should not be prioritised above another. For example, needs relating to social inclusion should be seen as just as important as personal care, when the need falls within the same band.

The revised guidance aims to ensure that councils prioritise need by recognising the importance of person-centred care and preventative services, and looking to achieve a person's identified outcomes for their care and support, rather than focusing on providing services.

Please be aware that a council should not change the level of criteria of need it is meeting unless this has been agreed at a senior level of the council and publicised as such. Councils do not have to provide services for all levels of need at this time, but they should publish information on the services they provide for the particular levels of needs.

If you do not meet the current eligibility criteria of your local council, the council should still support you with adequate signposting to alternative sources of support, including information, advice and advocacy.

Practice guidance to support implementation of the revised guidance was published in April 2010 by the Social Care Institute for Excellence. The revised guidance is based on local council's current responsibilities. These may be subject to change in the future as part of the plan to reform adult social care.

You can view the practice guidance at:

www.scie.org.uk/publications/guides/guide33/files/guide33.pdf

10 How to find out about services

Your local council and health services have a duty to produce information about the services that are available in your area. This should range from information leaflets up to and including strategic plans which outline how the council and health services will meet the needs of the local people. The strategic plans are called Community Care Plans or Long-Term Care Charters. The requirements are specified in central Government guidance called 'Better Care, Higher Standards' (see section 3.1) and the 'National Service Framework for Older People'. This information should be available from your local council social services department, hospital or primary care trust, or from other information points, such as the local council's information desk or your local library.

11 Getting care and support

Once your needs have been identified in your assessment, it will be decided if all or some of your needs will be met by the local council in accordance with the government guidance on eligibility criteria, as explained in section 9 of this guide. Social services must provide the care and support that they have agreed you are entitled to in order to meet your needs. They cannot withdraw or reduce the care and support you are getting without carrying out a re-assessment of your needs first.

The care and support you need should be stated in your written care plan (see section 7) and may be provided by a private or voluntary agency employed by the local council social services. Some aspects of your care and support may be provided by the health service, for example, a community nurse or community psychiatric nurse. For more information, see our guide: **Health Difficulties: how to cope with changing needs** (guide number 8).

If you are unhappy with any of the care and support that you receive, you should consider making a complaint. For more information, see our guide:

Complaints about community care and NHS services in England (guide number 18).

12 Using direct payments or a personal budget rather than receiving services

The Government has introduced a new way of thinking about care and support called 'personalisation'. It aims to transform social care so people and their needs are at the heart of it. Personalisation is about people having choice and control over any assistance and support that they need to live their daily life. It is about looking at the whole of a person's life, their aspirations as well as their care and support needs.

One part of this is personal budgets. People who are eligible for care and support services should be assessed for a personal budget in order to enable them to direct their own care and support. The goal is for older people to have increased choice and control over the care they receive and who provides it.

By April 2011 every council is expected to offer personal budgets to every older person who is eligible to receive council-funded adult social care services. Since October 2010, personal budgets have to be offered to all new people and their carers accessing social care services.

12.1 What are personal budgets?

Personal budgets are a key part of the personalisation agenda. A personal budget is the amount of council money available for your care and support, decided in line with your agreed care and support plan. Personal budgets have been introduced by all

councils across the country to all eligible people with care and support needs. The target is for everyone eligible to have a personal budget by April 2013. People who are eligible for care and support services should be assessed for a personal budget in order to enable them to direct their own care and support if they want to. The goal is for older people who want it to have increased choice and control over the care they receive and who provides it.

If you are eligible for a personal budget you can use this pot of money in a number of ways (with assistance from a 'care broker' if required) to purchase the care and support you feel is most appropriate for your needs. You can use it as a direct (cash) payment (see section 12.2). Alternatively, it can be held and managed as an account by your local council in line with your wishes or as an account placed with a third party such as a care provider. You can choose to take money out from your personal budget either in the form of a direct payment in cash, as services or a mixture of both. Although you will have a personal budget you can still choose to have social services arrange the care you need.

The total amount you receive in your 'personal budget' will be based on your local council's 'resource allocation system', where a series of questions will be asked and points given to determine the overall size of your budget. The amount of money offered must be moderated in order to ensure that all your individual needs (including any social, emotional or psychological needs) are met in

full. The reason for the amount arrived at must be explained to you and you can request to have this in writing. Despite the new resource allocation system, you are still entitled to receive a full assessment of your needs. Councils are currently using different resource allocation systems. A common resource allocation framework was published in October 2009 (and revised in 2010) which councils can use if they would like to. However, this is still a work in progress, and concerns have been raised about the consistency of the resource allocation system used by some councils.

12.2 What are direct payments?

Direct payments are one way of using your personal budget. Direct payments are a cash payment provided as an alternative to receiving services that are provided directly by the council.

With direct payments, rather than receiving council services directly, you receive a cash payment into a nominated account, which you then use to arrange your care and support services. Using Direct Payments can be a good option if you want to have more flexibility about the times you receive services. It also means you have more control over choosing a care worker to support you as you can employ someone directly using your cash payment.

It should be noted that although direct payments allow greater choice you can only use them to address your care needs as identified in your needs assessment – you cannot use them for other

un-assessed needs, although there is some flexibility in how your needs are met and which services you can access.

Social services should provide you with information about the different services available so you can purchase services directly in order to meet your needs, and, if required, should support you to do this.

Social services should be able to provide you with details of a local support scheme which can help guide you through the process of Direct Payments. Alternatively, you can contact the National Centre for Independent Living (tel.: 020 7587 1663; www.ncil.org.uk) for details of a scheme in your area.

If you have a complaint about the amount in your personal budget you may want to make a complaint to the council. If however the complaint relates to the care you have accessed or purchased as part of a personal budget (via a direct payment) you may want to make a complaint to the self-funders complaint service at the Local Government Ombudsman (tel.: 0300 061 0614; www.lgo.org.uk).

If you need more information about personal budgets and direct payments, please contact your local social services department, and/or an independent advice service, such as Counsel and Care (tel.: 0845 300 7585; www.counselandcare.org.uk). You may also want to see our guide:

Home Care: using direct payments and personal budgets (guide number 23).

13 Charging for care and support

The council can charge you for the care and support they provide you with. They cannot charge anyone else, such as your partner or somebody that you live with, for the care and support that you receive. If you need health services, such as a community nurse, as part of your care plan, these will be provided free of charge.

Each council can set their own rules for charging for care and support at home, but their policy must comply with the government guidance 'Fairer Charging'. You can view a copy of the 'Fairer Charging' guidance on the Department of Health website: www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_4117931.pdf.

In order to decide how much you should contribute to the cost of your care, social services should undertake a financial assessment of your income and capital to determine your ability to pay.

The charges they make as a result must be reasonable and should not put you in financial difficulty. The charge should not take your income below the level of your Pension Guarantee Credit entitlement plus a 25% 'buffer'. This means your income should not be taken below £171.69 for an individual or £262.13 for a couple.

The 'Fairer Charging' guidance also says that councils are allowed to take your savings into account when considering what to charge for services. If you have capital of more than £23,250 you may be

charged in full for the services you receive. Some councils are more generous and set a capital limit which is higher than £23,250, but they are not allowed to set it any lower than £23,250. Councils are also allowed to take into account income from savings between £14,250 and £23,250, where they will assume that you have £1 a week 'tariff' income for every £250 you have in savings between £14,250 and £23,250.

If you have a personal budget, the amount you contribute to it should be calculated by the council using the 'The Fairer Contributions Guidance: Calculating an Individuals Contribution to their Personal Budget'. This provides guidance for councils in England to use when determining what contribution, if any, a person receiving a personal budget should make towards it. You can view the Fairer Contributions guidance at:

www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/@ps/documents/digitalasset/dh_121223.pdf

If you have difficulty paying the charge for services, you can request that social services consider a reduction. Social services cannot withdraw services if you refuse to pay the charges, but they are within their right to pursue this debt if it is established that the charges are 'reasonable'.

Social services should publicise information on their charging policy and how they calculate how much you should pay.

You may be entitled to claim a disability benefit such as Disability Living Allowance or Attendance Allowance to help you pay for your support services. For more information, see our guide:

Disability Benefits: Attendance Allowance and Disability Living Allowance (guide number 3).

The mobility component of Disability Living Allowance should be excluded from your financial assessment. Likewise, if you only receive services during the day from social services, and receive the higher rate of Attendance Allowance or Disability Living Allowance care component, then only the lower rate should be taken into account in your financial assessment. This is because the higher rate is to help you pay for care for both day and night, while the local council is only helping to meet your daytime needs.

If it is identified in your care plan that your needs are too high and complex to be met in your own home and they need to be met in a care home (and if you agree to this), you will be charged under different principles, as set out in the Charging for Residential Accommodation Guide (CRAG). For further information about paying care home fees, see our guide:

Care Home Fees: paying them in England (guide number 16).

14 A review of your needs

If your needs change or you do not feel that your first assessment took all of your individual needs into account, you can ask for a review or re-assessment from social services. You should try to contact the person who carried out the first assessment, or you can contact the duty social services desk. If they refuse to review your assessment, you can request a new assessment or make a complaint.

The Single Assessment Process for Older People guidance makes it clear that a review of your needs should be held within three months of first receiving services and from then on at least every 12 months. This is specified in each local council's 'Better Care Higher Standards Charter' (see section 3.1 of this guide). If you have been discharged home from hospital, you should get a review within 2 weeks. For more information, see our guide: **Hospital care in England: what you need to know before, during and after your stay** (guide number 11).

15 Refusing services and other problems

Government guidance advises local councils that they must meet your assessed needs if they fall within their eligibility criteria, but that they may consider their budget when deciding how to meet your needs. This means that they may offer you their 'preferred option', which may be the cheapest option. For example, if you need 24-hour care, social services may decide your needs can be met most economically in a care home rather than by arranging for you to receive 24-hour services in your own home.

If you do not want to go into a care home and have the mental capacity to make decisions about your own care and welfare, the council cannot force you to move. However, if you stay in your own home you may not receive enough help from social services for you to live comfortably and safely. You should be able to obtain a review of your original needs assessment and argue that you need to remain in your own home. If social services will not increase the level of your care at home you may have to sign an agreement to acknowledge that some of your needs are not being met. Social services should not refuse to provide you with any services at all, but you may have to negotiate with them to agree that unpaid carers will meet some of your needs or that additional private care will be paid for by you.

You may be offered services that you do not want, for example, you may not want to go to a day centre or have care staff visiting you at home. Discuss your concerns with your social worker or care

manager and try to arrange for your needs to be re-assessed and the services changed. You have the right to refuse services if you have the mental capacity to do so. Social services cannot force you to receive help.

If at any time you feel that you are being pressurised to move into a care home against your will you may wish to seek further advice about your rights from an independent advice organisation, such as Counsel and Care (tel.: 0845 300 7585; www.counselandcare.org.uk).

You may also wish to involve the support of an independent advocate to ensure your wishes and rights are taken into account in any decision making about your care arrangements. Independent advocacy might also be a useful option to consider if there are any problems or disputes about your care arrangements. You can find an independent advocate by calling the Older People's Advocacy Alliance (tel.: 01782 844036; www.opaal.org.uk). To find out more information about advocacy, see our guide: **Independent Advocacy** (guide number 25).

16 Challenging decisions

If you are not satisfied with your needs assessment, have been refused an assessment, have experienced delays, or are concerned about the quality of the services you receive, you can complain to the council. You can do this informally by verbally raising the matter with the staff concerned or formally, by putting your complaint in writing using the local council's complaints procedure. A copy of the council's complaints procedure should be available on their website or can be obtained by telephoning them directly.

For more information about making a complaint, see our guide: **Complaints about community care and NHS services** (guide number 18).

17 Carers' needs

Social services are required by law to consider the needs of carers. If you have a relative or friend who regularly helps you, they may wish to request an assessment of their own needs to enable them to be involved in activities outside of their caring role. This is known as a carer's assessment. A carer's assessment may be carried out at the same time, or separately from the assessment for the cared-for person. A carer's assessment may result in extra care and support for you, and/or additional support for your carer. Such support could be a 'sit-in' service or day care for you so that your carer can go to work or attend social events. If the support is for your carer, they may have to make a financial contribution for them. If your carer meets the eligibility criteria, they may be able to receive Carer's Allowance, a benefit paid to carers. For more information about carer's assessments, carers' support services and Carer's Allowance, see our guide:

Carers: what support is available (guide number 10).

18 Proposals for reform

In May 2011 the Law Commission published the report 'Adult Social Care' which reviewed the current legislative framework for adult social care. The report made 76 recommendations to create a clearer, more modern and cohesive framework for adult social care law. The report recommended there should be a single statute of adult social care law for England to replace the current framework of overlapping and inconsistent statutes. As well as retaining existing rights of service users it makes recommendations for additional provisions including:

- Councils should have a greater ability to delegate assessments to other bodies, but councils will retain the final decision-making power on providing services.
- Introduce a national eligibility framework for the provision of community care services and what level of needs councils must at a minimum meet.
- Impose an enhanced duty on councils to co-operate when a service user moves to a different area.
- Carers should no longer have to request a carer's assessment. The duty to assess should be triggered when the carer appears in need of services that the council can provide.
- Direct payments could be used to pay for residential care.

The Government has committed to consider the recommendations but has not yet said which, if any, of the recommendations it will accept. The government intends to introduce legislation on adult social care law reform in 2012.

Our advice workers can advise on a wide range of issues affecting older people, their families and carers. Counsel and Care produce a range of guides which can be downloaded from our website www.counselandcare.org.uk, or by requested calling our guide orderline on 020 7241 8522.

This guide is not a full explanation of the law and is aimed at people over 60.

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