



Non-enforced decisions

– reporting obligation and special charge in the Social Services Act and the Act concerning Support and Service for Persons with Certain Functional Impairments

A decision by a municipality's social services on assistance to an individual must be enforced immediately. To ensure that municipalities implement the measures the Riksdag has introduced sanctions in the form of a special charge and a reporting obligation.

If a municipality fails to enforce a decision on assistance within a reasonable period an administrative court may impose a financial penalty (special charge). The municipality must also report on measures decided that have not been enforced within three months to the municipality's auditors, the municipal council and the Health and Social Care Inspectorate (IVO).

Despite the measures introduced, the number of non-enforced assistance decisions has continued to increase in recent years. Applications for assistance that are refused may be appealed to an administrative court. Favourable decisions, that is decisions to the benefit of an individual, cannot be appealed, however. This may entail a risk of the legal security of individuals being disregarded. The Swedish NAO has therefore audited whether the special charge and reporting obligation are effective in dealing with the problem of non-enforced assistance decisions and judgements. The audit is based on the following questions.

- Are there recurring patterns for different kinds of measures or municipalities that may explain why the number of reported non-enforced decisions is increasing despite the steps taken?
- Is the extent of the municipalities' obligation to report non-enforced decisions well-balanced in relation to the purpose and administrative burden?

Does the Health and Social Care Inspectorate's processing of the special charge contribute to sound practice and is the special charge well-balanced in relation to its purpose?

Audit findings

The Swedish NAO's overall assessment is that the reporting obligation and the special charge in combination have helped to improve legal security for individuals who have been granted assistance. More municipalities now report non-enforced decisions, which the Swedish NAO considers is due to increased awareness and follow-up. At the same time, the reporting obligation and special charge system entails substantial administration. In addition, the reasons that assistance decisions are difficult to enforce vary, which means that the sanctions have little chance of entirely guaranteeing timely enforcement of assistance decisions. The audit thus confirms previous follow-ups by the National Board of Health and Welfare and the Health and Social Care Inspectorate.

The sanctions could, however, indirectly contribute to improved enforcement. The municipality's auditors sometimes start an audit in municipalities that have paid a large number of special charges. This may start a process in which non-enforced decisions become visible in planning documents and priorities.

No clear patterns in increased reported decisions, but more municipalities are reporting

Municipalities have reported more than 90,000 non-enforced assistance decisions in the period 2010–2018. With the exception of some isolated years, the number has increased every year since 2010.

No clear pattern is evident in this increase. No major change has taken place in the measures the municipalities report as difficult to enforce. Waiting times have also been relatively unchanged and half of all reported decisions are enforced or closed within six months. One explanation for the increase is that more municipalities are reporting non-enforced decisions. Since 2014 all municipalities except three have reported non-enforced decisions at some time. Previous follow-up by the Health and Social Care Inspectorate and the municipal auditors' audits show that municipalities with written procedures for reporting also report more non-enforced decisions.

Reporting helps give an overall view but can be simplified

The municipalities' obligation to report non-enforced assistance decisions has existed for more than ten years. At the same time, many municipalities still find it hard to compile the data required for reporting from their own operational systems. The reporting requirement thus fulfils a function as a tool for municipalities to obtain an overview and planning data as regards non-enforced decisions. However, it is important to assure the quality of reporting.

The audit has also shown that data from the municipalities' reporting may serve as one of several decision-support items in municipal housing provision plans.

At the same time, the reporting obligation is time-consuming and an administrative burden. Even in cases where it is effective and there are procedures in place it is not simple to enforce decisions. Furthermore, most of the decisions reported are enforced within six months without the Health and Social Care Inspectorate having applied for a special charge. Therefore there may be scope to simplify the extent of reporting in some respects.

The Health and Social Care Inspectorate has endeavoured to simplify and streamline the processing and reporting of non-enforced decisions. This work is still in progress and may also be of benefit to municipalities. The ambition includes reducing the number of cases for the Health and Social Care Inspectorate to process by means of a new technical solution for municipalities' reporting to the Inspectorate. The municipalities that find it difficult to produce statistical reports on non-enforced decisions from their own systems would then more easily be able to obtain help with this via the Inspectorate's system.

The Health and Social Care Inspectorate has also developed ways to use the information from the municipalities' reports in the Inspectorate's risk-based and self-initiated supervision. In addition, the Inspectorate's knowledge sharing from reporting of non-enforced decisions to municipalities and committees is important to put reports in context.

The municipalities' reporting obligation does not include appealed judgments. However, appealed judgments that are not enforced are subject to the special charge. The Health and Social Care Inspectorate's supervision has shown that it is unusual for judgments not to be enforced, but that it may be difficult to obtain information on whether an appealed judgement has been enforced or not from the municipalities' operational systems. Favourable judgments that are not enforced cannot be appealed. Consequently it is important to monitor them from the perspective of legal security.Appealed judgments therefore need to be included when reporting.

Case law has been developed but the special charge is of little significance for enforcement

The processing of the special charge from the application by the Health and Social Care Inspectorate to the court's decision often takes a long time, sometimes several years. Many decisions are also enforced or closed when the Inspectorate applies for a special charge. This means that both municipalities and the Inspectorate need systems to follow individual cases and to be able to see the link between decision and charge. The audit shows that many municipalities consider it difficult to influence and be prepared for a special charge. There are also instances of municipalities introducing procedures to avoid charges or giving

priority to cases where a charge has been imposed. Thus it seems to be the risk of a charge rather than the size of the charge itself that is significant. Municipalities with many non-enforced decisions also have more applications for special charges made against them, but nevertheless continue to report many decisions. The same applies to municipalities that have paid relatively large amounts in charges.

The Health and Social Care Inspectorate's applications for special charges mainly refer to the measures the municipalities find it hardest to enforce and where waiting times are thus prolonged. Few applications for special charges refer to decisions with shorter waiting times than one year. The applications for special charges thus appear to reflect how serious the delay is for the individual, based on its length.

The audit also shows that case law has developed in which the assessments of the Health and Social Care Inspectorate and the courts concerning special charges are becoming more closely aligned. It is unusual for the Health and Social Care Inspectorate's special charge applications to be refused and the number of refusals has decreased over time. However, it is still relatively common for a court to impose a special charge in a lower amount than requested by the Inspectorate. Here too there is a decreasing tendency by the courts to reduce the charge amounts requested by the Inspectorate.

The special charge should reflect the seriousness of the delay for the individual. At the same time, most special charge judgments result in relatively small amounts, though for some measures there may be very high charges. The reason is that the special charge must be severe and set so that the municipality does not gain anything by not enforcing a decision. This means that more expensive measures in most cases attract higher charges. Since the amount added to the charge is the same for all measures in percentage terms, this augments this effect. Consequently, differences in charges arise that are not always associated with waiting time or seriousness of the delay to the individual. For measures costing relatively little to enforce, the charge is seldom as severe as for housing measures, for example.

The severity of the charge will thus also be different for small or large municipalities. Despite the fact that it is often worthwhile for municipalities to appeal judgments on special charges, few municipalities do so. This applies in particular to smaller municipalities. This may be because the municipalities do not have the time and the resources required for an appeal or that they consider the amounts to be too small. The Swedish NAO considers, however, that the combined effect of reporting and the risk of a charge is significant.

Recommendations

The Swedish National Audit Office recommends that the Health and Social Care Inspectorate

- continues its simplification efforts for handling non-enforced decisions
- continues its knowledge sharing efforts from municipal reporting of non-enforced decisions, both to municipalities and to its own risk-based supervision
- assures the quality of municipalities' reporting by annually following up municipalities/committees that have reported few or no non-enforced decisions in the past year.

The Swedish National Audit Office recommends that the Government

- considers whether the municipalities' obligation to report non-enforced decisions should also include non-enforced favourable judgments
- reviews whether time limits in the municipalities' obligation to report non-enforced decisions need to be adjusted in light of the fact that most reported decisions are enforced within six months.