

Care home fees

Who decides whether I have to pay for my care home fees and how is my contribution assessed?

Local authorities under the guidance of the Department of Health (DOH) deal with the assessment of residential care home fees. This information sheet is a general overview of a complex area of law. You may wish to refer to the National Assistance (Assessment of Resources) Regulations 1992 and to DOH guidance in the Charging for Residential Accommodation Guide (CRAG).

The following applies to those needing residential accommodation in a care home and not those who require nursing care. The rules differ when nursing care is required. Full National Health Service funding may be awarded for those who require 24-hour continuous nursing care.

While an individual has capital of more than £23,000 they will generally be expected to meet the full cost of their accommodation and personal care provided by a care home. If they have capital of less than £14,000 they will not be obliged to use this, but will be expected to contribute any weekly income, with a few exceptions, towards care home fees.

During such time as an individual has capital of more than £14,000, but less than £23,000, the local authority will meet care home fees in part and contributions will have to be made from the resident's capital and income.

Although care home residents are assessed individually, local authorities have discretion to seek a contribution from a spouse or civil partner towards the cost of care home fees

if they believe the spouse or civil partner is financially capable of doing so. This "liable relative" payment is voluntary and can only be enforced by court action.

Will the value of my house be taken into account in the assessment of capital?

When assessing your liability for care home fees a local authority will usually include the value of your house, although it is not taken into account in the following situations:

- 1 if your spouse or civil partner is living there;
- 2 if a relative over 60 years old lives there;
- 3 if a disabled relative under 60 years old lives there;
- 4 if it is the main home of children under 16;
- 5 during the first 52 weeks (subject to local authority discretion) that you are in care temporarily; or
- 6 during the first 12 weeks after you enter into care permanently.

It should be borne in mind that a local authority can use its discretion to disregard the value of a house when assessing residential care fees in other circumstances. This discretion could, for instance, be used to disregard property occupied by someone who had given up his or her own home in order to look after a person who subsequently had to move into a care home.

What other capital assets may be disregarded?

Examples of other disregards for the purpose of the capital assessment are:

Head Office

3 Lonsdale Gardens
Tunbridge Wells
Kent TN1 1NX
T 01892 510000
F 01892 549884

Thames Gateway

The Old Rectory
St. Mary's Road
Greenhithe
Kent DA9 9AS
T 01322 623700
F 01322 623701

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- 1 personal possessions;**
- 2 personal injury compensation settlements;**
- 3 Social Fund payments;**
- 4 payments from charities;**
- 5 the surrender value of life assurance policies or annuities; and**
- 6 the value of a reversionary interest under a trust.**

Can I be forced to sell my house?

You cannot be forced to sell your house unless a court order requires a sale. However, if the value of your house has been taken into account in the assessment of your liability for care home fees, and you cannot otherwise meet these fees, then it is likely the local authority will take legal action to enforce a sale.

It is possible to come to an arrangement with a local authority. For example they can "lend" you the care home fees or provide "interim funding". The local authority may agree to pay a resident's care home fees in return for a charge being placed on the resident's house for the amount owed to them. The local authority will then have a claim on the proceeds of sale when the house is sold.

If you own your house jointly, a local authority can put a value on your share and treat it as part of your capital. In practice, this will be a matter of negotiation with the local authority.

Can I transfer my house to another individual or to a trust to prevent its sale?

If someone gives away capital in order to avoid a liability for care home fees, they

may be assessed as if they still owned that capital. The local authority will look at the circumstances and events leading up to a gift in order to assess whether the donor's intention was deliberately to deprive themselves of capital. If the local authority makes a finding of deliberate self-deprivation, the value of the capital given away will be included within the donor's means tested assessment as "notional" capital.

Although it is for the local authority to justify a decision that an individual has deliberately deprived themselves of an asset, they do not have to prove that this was the sole motive for a transaction, only that it was a significant one.

As well as gifts of capital to others, local authorities can examine purchases of unnecessary or extravagant items, such as an expensive painting, where they believe the intention was to reduce the amount of a resident's assessable capital.

Similarly, placing capital assets within a trust may be treated as deliberate deprivation depending on when such action was taken and the likelihood of the donor needing care home accommodation. A local authority's assessment of the trust income or capital is dependent on whether there is an absolute (outright) entitlement to it. Any absolute entitlement by the resident will be treated as his or her personal income or capital.

If a Discretionary Trust is established without any absolute entitlement, a local authority may only take into account payments actually made to the resident and, provided the trustees have complete discretion, the trust fund will not automatically be taken into account in an

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assessment. If the resident has a life interest under a trust, his or her entitlement to income will be subject to assessment for the purposes of care home fees.

A transfer of assets into a trust is not a guaranteed method of protecting capital from local authority assessment. Local authorities can investigate the circumstances and intention at the time the trust was created. If they take the view that deliberate deprivation has taken place, they can include trust assets as "notional" capital in their financial assessment.

If there are other reasons for transferring property, such as succession or tax planning, then it is possible that the transfer could be viewed in a different light. Should you wish to deal with property in this way, you need to plan ahead to increase the chance that a transfer of assets will not be viewed as deliberate deprivation. It should be borne in mind that local authorities can examine transactions as far back as they want, and that there is no time limit after which a transaction is "safe".

What dangers could there be to me in giving away my house?

There are many factors you should consider carefully before giving away your home. If you give your house to your children, for example, the house could be at risk if they were to die first leaving it to someone else under their Will, or if they became involved in bankruptcy or divorce proceedings.

In addition, although you may think it unlikely, once the house is transferred there will be nothing to prevent your children from selling it.

A gift of your house may also have tax implications that should be considered. For example, a gift to your children will mean that they become liable for Capital Gains Tax on any future growth in value of the house. If you give away the house and remain living there, this will be treated as a gift with a reservation of benefit, so that the value of the house remains in your estate for Inheritance Tax purposes.

From another viewpoint, if you do need to move into a care home and you are not able to make any financial contribution, the local authority may only provide you with a basic level of care. Your own financial needs, and comfort in old age, should be your first priority.

Disclaimer

This information sheet is intended as a general guide. Since any course of action must depend on your individual circumstances, you are strongly recommended to obtain specific professional advice beforehand. We do not accept any responsibility for the consequences of any action that may be taken as a result of having read this information sheet.

NOTE: The law is stated at 6 April 2009.

If you require further information, please contact Mary Robinson or Stuart Goodbody on 01892 510000 or by email at:

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