

## Long Term Care

For many people the thought of being consigned to a care home is an anathema, something made even worse by the fear they will have to sell their family home in order to pay for it, especially if they are of the post-war baby-boomer generations who were brought up to believe that the 'State' would pay. Unfortunately this is no longer the case, and the stark reality is that we're going have to pay our way long after we've stopped working and earning a living; meaning that the key question is not whether we'll have to pay but how we're going to do it.

To make matters worse, the Community Care Act 1990 (in Sec. 22 NAA 1948 (as amended by s.44 NHSCCA 1990)) says that; "*Local Authorities are responsible for funding Community Care Services and are required to assess people who require them and decide if those needs should be met. Furthermore, they have an obligation to recover the cost of such Care*". The legislation is particularly well drafted and allows a local authority great scope in how they recover those costs.

Putting that in context, the cost of Care is not cheap (see below) and it can soon erode the value of your estate.

| Type of Care     | Average UK cost | Average South East cost | Average stay   |
|------------------|-----------------|-------------------------|----------------|
| Nursing Home     | £36,000 p.a.    | £50,000 p.a             | 2.5 to 3 yrs   |
| Residential Home | £26,000 p.a.    | £30,000 p.a             | 4.5 to 5.5 yrs |
| Care at Home     | £16,000 p.a.    | £26,000 p.a.            |                |

### Will I have to pay?

The short answer is yes and, if you live in England and have over £23,000 in capital (including the value of your home) you'll be assessed as being able to meet the full cost of your care. That said, but within certain broad limits, the Law allows you to arrange your affairs to be as beneficial as possible to you and not the State. What you cannot do in this context is deliberately deprive yourself (that is knowingly give away) assets such as property, income or savings, or sell them at below their market value), simply to qualify for benefits, of which local authority funded long term care is one, especially if you know that the need or the likelihood for care already exists . If you do, a local authority may assess you as still having 'notional' capital or income and seek to overturn any such arrangements thus forcing you to pay. See *Age Concern Fact Sheet 40*.

There are circumstances when the value of the house cannot not be assessed for care funding, such as (See *Age Concern Fact Sheet 38*): -

- there is a surviving spouse or partner still living in house
- there is a relative over the age of 60 still living in property
- there is an incapacitated relative still living in the property
- you have a child under 18 for which you are liable to maintain
- where part is owned by another, such as if you are Tenants in Common

All of that said, providing that you have no foreknowledge of the need for long term care or action by future hostile creditors and have other good reasons for transferring or selling the asset whilst still in some way benefiting from it, you may be able to protect some or all of its value for your heirs. In fact, the Department of Health in Section 6.064 of 'Charging for Residential Accommodation Guide (CRAG), which states that: *"The timing of the disposal should be taken into account when considering the purpose of a disposal. It would be unreasonable to decide that a resident had disposed of an asset in order to reduce his charge for accommodation when the disposal took place at a time when he was fit and healthy and could not have foreseen the need for residential accommodation. "If one is going to transfer ownership of assets must do it early and not delay until ill-health is diagnosed"*

How long before the event you can transfer or sell an asset is still the subject of legal debate, but generally speaking the time limit for assuming that deliberate deprivation has taken place is if the need for long term care occurs within six months of the sale or transfer. Beyond six months, it is likely that a local authority will have to prove that you had deliberately deprived yourself of the means to pay. See *Age Concern Fact Sheet 40*.

In any event, general legal planning such as becoming Tenants in Common can help obviate this problem, especially if only one of you eventually needs long term care.

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