Long Term Care

BACKGROUND
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.

Before going into the subject of care in more detail, it is important at the outset to state that the issue of care and the transfer of assets is a complicated one that has very serious consequences. It is advisable to seek legal and financial advice before transferring an asset. The Law Society produces guidance for solicitors on gifts of property and the implications for long-term care www.lawsociety.org.uk/support-services/advice/practicenotes/making-gifts-of-assets/.

LOCAL AUTHORITIES & THE RESPONSIBILITY FOR CARE
Local Authorities have the responsibility for funding care services, assessing people who require them and deciding if and how those needs should be met. The Local Authorities can **recover the cost of such care (see Care Act 2014).**

The legislation is particularly well drafted and allows a local authority great scope in how they recover those costs.

The cost of care is not cheap (see table below) and it can soon erode the value of your estate.

Care home fees 2018

	Average weekly UK care home fees			
	Residential care		**Nursing care**	
	Frail older	**Dementia**	**Frail older**	**Dementia**
North East	£563	£575	£674	£697
North West	£519	£530	£792	£820
Yorkshire and the Humber	£561	£572	£761	£787
East Midlands	£589	£601	£754	£780
West Midlands	£577	£589	£854	£883
East of England	£670	£684	£980	£1,014
London	£721	£736	£922	£954
South East	£732	£747	£1,017	£1,052
South West	£662	£676	£955	£988
Wales	£574	£586	£767	£794
Scotland	£674	£689	£823	£851
Northern Ireland	£519	£530	£669	£692
UK	617	£630	£844	£873

Source: LaingBuisson Care of Older People UK Market Report 29th edition 2018

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LOCAL AUTHORITIES AND REQUESTS FOR CARE ARRANGEMENTS

If you ask for local authority support to arrange residential care, they will first carry out an assessment of your needs. They decide if you meet the **eligibility criteria** and if residential care is the best way to meet your needs.

You have a say in your care. The local authority must consider **all other options** that might allow you to remain at home. The care home recommendation must be in a care and support plan discussed and agreed with you.

The local authority will consider your circumstances. A financial assessment ('means test') is made to see if you must pay something towards the care home fees. In some cases, you must pay the full amount. Your income and capital is included in the assessment, although some is disregarded. Capital includes savings, investments and property. Income includes pensions and welfare benefits.

The local authority has a legal duty to ensure your needs are met. If these are found to be eligible needs, (following the financial assessment), you are entitled to local authority funding.

The local authority must also ensure your eligible needs are met if you do not qualify for funding but cannot arrange care for yourself, and have no one who is willing and able to do it for you. As part of this process, a local authority must give you a personal budget figure sufficient to ensure your eligible needs can be met and that provides you with a choice of care homes. **(See Age UK Factsheet 40)**

PAYING FOR CARE

As mentioned above, the local authority will conduct a means test and have upper and lower limits for financial help.

In summary, if a person has capital assets that are:

- over £23,250 the person has to pay their own fees and is treated as a 'self-funder'
- between £14,250 and £23,250 the person qualifies for some financial support from the council
- under £14,250 the council pays the person's fees, but the person has to contribute from their income, including pension and benefits. If the capital assets are between £14,250 and £23,250, the person contributes £1 a week for every £250 (or part of £250) they have over the lower limit. So if they had £15,000 in savings, they would be £750 over the lower limit and so must pay £3 a week.

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.

THE MEANS TEST- VALUATION OF CAPITAL IN THE FORM OF PROPERTY

A property can be taken into account in your means test. It will be given its present market value, less any mortgage or loan secured on it and less 10 per cent where there would be expenses involved in selling it. The 10 per cent rule is only for calculating the value of a property before its sale. Once your property is sold, you are treated as having the actual share of the sale proceeds you are entitled to after any secured debts and the actual expenses of sale have been paid (See Age UK factsheet 38)

THE MEANS TEST- DISCRETION TO DISREGARD

The guidance gives local authorities discretion to disregard the value of your property if someone living there does not qualify for a mandatory disregard. It does not have to exercise this power but should give full consideration to a request to do so (see Age UK factsheet 38).

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THE MEANS TEST - DELIBERATE DEPRIVATION OF CAPITAL

This is the situation where you 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.** 'Notionally' means that, even though you may not have that capital asset anymore, you are treated as if you do still possess it.

The key issue is **knowledge that you had the need or the likelihood of care at the time when you are giving away assets**.

The local authority must prove, meaning that they must have evidence, that you knew that you may need care and support in the future at the time that you carried out the act that reduces your assets. The local authority must establish from the evidence available intention and forseeability (See *Age UK Fact Sheet 40)*.

Deprivation covers a broad range of ways you might transfer a capital asset out of your possession.

Annex E of the guidance provides the following examples that may be deemed to be deprivation of capital:

- a lump-sum payment to someone else, for example as a gift;
- a substantial expenditure has been incurred suddenly and is out of character with previous spending;
- the title deeds of a property have been transferred to someone else;
- assets put in to a trust that cannot be revoked;
- assets converted into another form that are disregarded in the financial assessment, for example personal possessions;
- assets reduced by living extravagantly, for example gambling;
- assets used to purchase an investment bond with life insurance.

Other courses of action, such as selling an asset for less than its true value, may also be seen as deprivation.

It is up to you to prove you no longer possess an asset. Annex E has examples of acceptable evidence to show you no longer possess a capital asset:

- a trust deed;
- deed of gift;
- receipts for expenditure;
- proof that debts have been repaid.

MEANS TEST- DEPRIVATION OF INCOME

It is possible to deliberately deprive yourself of income. For example, you could give away or sell the right to income from an occupational pension. You must prove to the local authority that you no longer have this income for a justifiable reason. If the local authority considers you have deliberately deprived yourself of income, they may treat you as possessing notional income, meaning it is still included in your means test.

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The local authority must determine whether deliberate deprivation of income has occurred. The guidance states they should consider:

- was it your income?
- what was the purpose of the disposal of the income?
- the timing of the disposal
- when the income was disposed of
- could you have a reasonable expectation of the need for care and support?

Income can be converted into capital, so deliberate deprivation can affect the capital-related tariff income calculation in your financial assessment.

DETERMINING WHEN DEPRIVATION IS DELIBERATE?
The guidance advises local authorities that avoiding your assessed care charges may not be the only motive behind the disposal of eligible capital or income ahead of your means test. There may be justifiable reasons, so the local authority must show why it has come to a deliberate deprivation conclusion.

Intention
Your intention to avoid your care charges must be a significant factor, or the only reason, you have transferred an asset elsewhere, in order to be found to have deprived yourself. Your local authority must prove this if they intend to take a transferred asset into account.

Foreseeability
Annex E of the guidance confirms it is unreasonable to decide you have disposed of an asset to reduce the level of care charges payable if, at the time of the disposal, you were fit and healthy and could not have foreseen a need for care and support.

LOCAL AUTHORITY INVESTIGATIONS
The local authority may conduct its own investigations into whether deprivation of assets has occurred, rather than relying solely on information you provide. Annex E of the guidance lists factors they should take into account: λ whether avoiding care and support charges was a significant motivation λ timing of the disposal. When the asset was disposed of, could you have a reasonable expectation of the need for care and support? λ did you have a reasonable expectation of needing to contribute to the cost of your eligible care needs?

MEANS TEST- WHEN THE VALUE OF YOUR HOUSE CANNOT BE ASSESSED FOR CARE FUNDING
There are circumstances when the value of the house cannot not be assessed for care funding, such as (See *Age UK 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

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