

NHFA Infosheet 3

Legal framework

A labyrinth of legislation, guidance, regulations and rulings dating back to 1948 governs the funding arrangements and responsibilities for long-term care in the UK. It's a sad fact of life that the provision of long-term care is often money led and experience has shown us that there can be varied interpretation of responsibilities sometimes resulting in funding or care services being denied. Here we set out the main areas of legislation and guidance referred to today to help you understand your rights.

The National Health Service and Community Care Act 1990 (NHSCCA)

Came into force on 1st April 1993 and provides the framework for the assessment of care needs and the arrangement of services by the local authorities. The duties this act places on local authorities include:

Section 46 To produce and publish a community care plan and consult with district health, family health services and housing authority, voluntary organisations, voluntary housing agencies, and any other persons as the Secretary of State may direct.

Section 47 The duty to assess individual need for the community care services covered by the Act; having regard to the results of the assessment a duty to consider the provision of such services to match individual needs.

Section 48 The duty to assess individual needs for community care services. See [Right to Assessment](#).

Section 50 The duty to establish a complaints procedure;

The provision of care varies according to each local authority, but policy guidelines set out by the Act should provide for:

- support for the user in his/her own home including day and domiciliary care, respite care, the provision of disability equipment and adaptations to accommodation as necessary.
- more suitable accommodation, which might be sheltered or very sheltered housing, together with social services support.
- a move to another private household, i.e. to live with relatives or friends or as part of an adult fostering scheme.
- residential or nursing home care.
- long-stay care in hospital.

The NHSCCA must be considered with numerous other acts, regulations, directions and guidance issued by the Secretary of State. These include:

The National Assistance Act 1948, Part III. Section 21

Amended by S.42 NHSCCA 1990 requires local authorities to arrange residential accommodation for people who 'by reason of age, illness, disability or any other circumstances are in need of care or attention which is not otherwise available to them.'

Section 29 directs local authorities to be responsible for a wide range of welfare services for disabled people ordinarily resident in their area. **Section 29(1)** defines eligibility for such services to be for those people who are over 18 years of age and are blind, deaf or dumb or who suffer from a mental disorder of any kind and any other adult who is substantially and permanently handicapped by illness, injury, congenital deformity or such other disabilities as may be prescribed by the Secretary of State.

The Health Services and Public Health Act, 1968

Provides for the after care domiciliary needs of older people.

The Chronically Sick & Disabled Persons (CSDP) Act 1970 and the Disabled Persons (Services, Consultation & Representation) Act 1986

Under which the local authority have a duty to carry out an assessment if requested. The assessment should happen as soon as possible, and prioritised according to urgency. Individuals have a right to assessment if they are handicapped, blind or partially sighted, deaf or hard of hearing, mentally ill or handicapped. Every registered disabled person has a right to assessment regardless of income. Those that are not registered as disabled can also apply for services under these Acts if it is considered that their disability would fall into the criteria prescribed in *Section 29 of NAA 1948*. There is also a duty to take account of carers who can be assessed jointly or separately. Services provided for within this act are:

- provision of practical help within the home;
- provision of disability aids and equipment;
- assistance with adaptations to the home;
- provision of meals;
- provision of, or assistance in, getting a telephone or any special equipment necessary to use a telephone;
- provision of, or assistance in, taking advantage of educational or recreational facilities, both inside and outside the home, including provision of, or assistance with, incidental transport.;
- provision of holidays.

National Health Service Act 1977. Section 21 and Schedule 8 (paragraphs 1 and 2)

Places a duty on every local authority social services to provide and arrange the adequate provision of home help for households where the need arises owing

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to the presence of a person who is suffering from: illness, lying in, an expectant mother, aged, or handicapped as a result of having suffered from illness or by congenital deformity. Paragraph 2 attributes the responsibility of making arrangements for the prevention of ill health and care and after care of those recently treated including the provision of home help and laundry services and other possible services for people who are physically or mentally ill including day centres, meals and social support.

Mental Health Act 1983, Section 117

Provides for people with mental disorders. It imposes a joint duty on health and local authorities social services to implement through a care programme approach free after care services for people who have been discharged from or, cease to be detained in hospital under sections 3, 37, 45A, 47 or 48 of the same Act.

Health and Social Care Act 2001

This Act introduced changes to residential care funding including the power for Secretary of State to set the means test limits, the twelve week property disregard, the Section 55 deferred payments scheme and an NHS Contribution towards nursing care in nursing homes.

The Right to Assessment

Section 47(1) NHSCCA 1990 'Where it appears to a local authority that any person for whom they may provide or arrange for the provision of community care services may be in need of any such services, the authority shall carry out an assessment of his needs for those services; and having regard to the results of that assessment, shall then decide whether his needs call for the provision by them of any such service.'

Under Section 47(1) of the NHSCCA, there are three main points to consider:

- A person need not ask for an assessment;
- the local authority have a duty to carry out an assessment where it appears that someone may be in need of community care services which they can provide;
- the word "need" is not defined by the Department of Health, although each local authority may or may not include a definition.

Access to Assessment

Application for an assessment can be made directly to the person's local social services department, GP or health consultant. The social services department must provide all relevant information about all services available from them. The person has a right to see their assessment, and registered disabled persons have the right to have a copy of their social services file. Decisions relating to the provision of services can be appealed against, if necessary.

Health or Social Care

There is a very fine line between what is considered to be free health care and means tested social care. The guidance HSC 2001/15 defines the responsibility of the health authority as to provide:

- primary health care;
- assessment involving doctors and registered nurses;
- rehabilitation and recovery (where this forms part of an overall package of NHS care as distinct from intermediate care);
- respite health care;
- community health services to people at home or in residential homes;
- specialist health care support to people in care homes or the community;
- healthcare equipment;
- palliative health care;
- specialist transport services.

The range, type and level of services to be arranged and funded by the NHS to meet continuing health needs are decided by policies and eligibility criteria set locally. Clearly the NHSCCA 1990 Act does not define where the divide between health and social care lies and it is feared that budgetary constraints may influence local policies although, National guidance is imminent.

Choice of Care Home

Where someone is assessed as needing a care home place, the **National Assistance Act 1948 (choice of accommodation) Directions 1992**, allows that person the right to choose whether the accommodation is in a local authority, private or voluntary sector home as long as a place is available and:

- it does not cost the local authority more than usual for someone with such needs: and,
- the home agrees to comply with the local authority terms and conditions.

If the chosen accommodation costs more than the authority would normally pay it can still be chosen if a third party is willing and able to pay the extra cost.

Seek Advice

The financial and legal implications to be considered when paying for care are wide, and require careful planning. Older people or their relatives should seek specialist advice, before taking on any commitment that they are unsure of being able to afford.

Taking the worry out of paying for care

For over 15 years the aim of NHFA Care Fees Advice has been to enable older people to meet the cost of their chosen care whilst also preserving their original capital and, with that, their independence and dignity. Unlike many older people today running out of money because of paying for care, our hope is that NHFA clients living in care homes can retain their financial independence and still be able to leave a significant inheritance for their families.

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If you are selling your home to pay for care one of the financial options for meeting care costs are Immediate Need Care Fee Payment Plans. These plans, although not suitable in every case, are specifically designed for older people who need care; they deliver a regular guaranteed tax-free income higher than can normally be achieved from traditional investments or annuities. Normally requiring just part of one's capital to purchase, they are a way of meeting care costs for life whilst potentially capping the cost of care. Thus, as so many older people wish, enabling an inheritance to be left for the family.

The price of a care plan depends on an assessment of life expectancy taking into account one's health and age. Therefore, the more impaired the life the lower the cost. There are only a few companies that offer this product and because their actuarial view of life expectancy can be quite varied consequently so can their prices. To combat this and obtain the best possible price for clients NHFA uses a common application form and health questionnaire submitted to all companies. Care plans can be purchased to commence payments immediately or, for a lower cost, after a predetermined deferred period of two years or more. In order for you to understand how they work below are two actual case studies. (Names have been changed to protect confidentiality.)

Gordon – Immediate Care Plan and Investments

Gordon, aged 95 had become very frail following a heart attack and stroke and needed to move into a care home. In May 2003 his daughter Maureen, who lived in Australia, flew home to make the necessary arrangements. She only had 3 months in which to organise everything and then could only visit once a year so she needed someone to help her look after her father's affairs who she felt comfortable with.

She chose NHFA as being the most appropriate organisation to assist her and met with her father's local NHFA Adviser.

Gordon had a State pension and Attendance Allowance adding up to £585 per month. The fees for the care home they chose were £2,167 per month and he required a further £65 to cover personal expenses. The shortfall in income was therefore £1,647 per month. Gordon had savings of £69,000 and a property worth £200,000 therefore he could expect no local authority funding.

Taking the worry out of paying for care
Maureen had no idea how the UK care system operated or what financial products were available and needed expert guidance to enable her to fully understand her father's situation.

Gordon's local NHFA Adviser prepared a detailed report clearly illustrating his options for meeting his care costs. After Gordon and Maureen had considered this they decided on an Immediate Care Fee Plan which, by using just part of his capital £39,297, provided the required £1,647 income increasing by 5% per annum compound. Of his remaining capital they chose to invest £205,000 in a portfolio of bonds in various cautious funds, avoiding equities and retained the balance on deposit for contingencies. Maureen introduced the NHFA Adviser to her father and the care home owner so they had someone to relate to in Maureen's absence.

Maureen completed all the arrangements just before she was due to return to Australia. Since then she has visited from Australia and met with her father's adviser to review his affairs at least annually.

Maureen continues with her life in Australia happily knowing that her father is being cared for and his finances are under control. By April 2007 the care

plan, costing £39,297 had paid out £80,040 and the investments of £205,000 continued to benefit from growth thus, together with the monies retained on deposit, potentially regenerating his Estate to the amount that Gordon had wished to leave for Maureen.

Muriel – Deferred Care Plan and Investments

Muriel, aged 88 years, was unable to cope at home as she was depressed and suffered from anxiety. Following blackouts and falls the decision was made that she needed the care and support of a care home. In September 2002, having settled his mother in the care home her son John contacted NHFA. Muriel's savings and the proceeds from selling her home totalled £145,000 which being above the means test limit meant that she would have to pay for her own care. He was concerned about how she was going to be able to remain there and meet the costs. Muriel was also upset and anxious about the cost, she had always thought that she would be able to leave her home to her children.

The care home only provided personal care, however, the fees were still £1,400 per month and Muriel's income from pensions and Attendance Allowance was only £690. Allowing £100 for personal expenses meant she had a shortfall of £810 per month.

Taking the worry out of paying for care
John met with his local NHFA Adviser to discuss ways of providing for the care fees in a way that also allowed his mother to fulfil her wish of being able to leave some money to her children.

After preparing a report detailing the options for meeting these costs and discussions with Muriel's two sons and daughter it was agreed that she should purchase a deferred care plan which

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would commence meeting the specified shortfall after a 2 year waiting period. The cost of this plan £29,238, was significantly less expensive than one providing an immediate income but it would provide an income for as long as she needed care beyond the waiting period.

A further £100,000 was placed in a range of carefully selected investments with the balance of just over £15,000 being left on deposit. Initially the care fees shortfall was funded from deposits and then from the investments. After 2 years the care plan started to provide for the majority of the shortfall.

Because the care plan, which had already paid out £27,311.44, was paying £937 per month increasing by 5% compound annually most of her shortfall would be taken care of leaving the investments to participate in potential growth.

The anxiety Muriel and her son John had at the outset has been replaced with the peace of mind in knowing that she can easily afford the care providing all the comfort and security she needs.

Wealth Warnings

In the above case studies the clients have chosen and benefited from care plans over a number of years. Although it is often the case that people can live for many years whilst receiving good quality care it can also be the case that death can occur sooner than expected in which case the capital used to purchase the care plan could be lost to the Estate. Care plans are just one option for meeting care costs and families must weigh up the peace of mind factor of knowing that a regular income is going to be received for as long as care is needed and potentially capping the cost of care against the risk that the purchase

price of the plan could be lost to the Estate on premature death unless capital protection is purchased.

As regards investments, past performance is not necessarily a guide to future performance or returns. The value of investments can fall as well as rise and may fall below the amount originally invested.

NHFA advice is available to all regardless of means

Further information and advice on paying for care or free copies of the NHFA Long Term Care Guide can be obtained from:

St Leonard's House, Mill Street,
Eynsham, Oxford, OX29 4JX

Care Advice Line: 0800 99 88 33
Telephone: 01865 733000
Facsimile: 01865 733001
Website: www.nhfa.co.uk
E-mail: enquiries@nhfa.co.uk

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