



advice and support for older age

**Independent
Age**

Factsheet

Your assets and the financial assessment for care home fees

This factsheet aims to explain what you may/may not be able to spend your capital on before moving into a care home in England, if you need help from the council to pay your fees.

If you transfer your assets or spend large sums of your capital (such as savings or property) before moving into a care home, the council may view this as 'deprivation of capital'.

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Independent Age provides advice to help people claim benefits, access social care and stay independent at home. Our local volunteers provide friendship visits and calls for lonely older people. To find out how Independent Age can help you, call us FREE on **0800 319 6789** or visit **independentage.org**



**LanguageLine
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Contents

1. What is deprivation of capital?.....	3
2. The financial assessment – what you need to pay towards your care home fees.....	4
3. Decisions about deprivation of capital.....	7
4. Examples of what may be seen as deprivation of capital to avoid care fees	9
5. What if I disagree with the council's decision?.....	13
6. What if my property is mentioned in my will?	14
7. Inheritance tax allowance.....	15
8. Advantages to keeping your capital.....	16
9. Getting legal advice	18
10. If you live in Scotland, Wales or Northern Ireland.....	19

1. What is deprivation of capital?

A council may decide that deprivation of capital has occurred if they believe that you have:

- transferred capital (such as savings or other assets) to someone else
- transferred ownership of a property to someone else
- made extravagant purchases.

The council will then have to decide if a significant reason for transferring or spending the capital was to avoid paying care fees. If they decide that it was, this is deprivation of capital.

When making this decision, the council have to take into account the timing of the transfer or spending of your capital, and the reasons for it. See chapter three for more about what the council must consider when making decisions about deprivation of capital.

What happens if the council decides I have deprived myself of capital?

If the council decides that you deprived yourself of capital to avoid paying care fees, they will see you as still having the capital or property that you deprived yourself of (they call this 'notional capital'), and will include its full value in your financial assessment for care home fees.

In other words, you may be expected to pay more towards your care home fees than you can afford, if the council thinks you have purposefully dwindled your money or other assets.

2. The financial assessment – what you need to pay towards your care home fees

Everyone who wants help from the council to pay their care home fees must have a care needs assessment (so the council can agree that you do need to move into a care home), and then a financial assessment. The financial assessment looks at the money and assets you have available to you, and what your contribution should be towards your care costs.

If you have a lot of capital or savings

If you have capital of £23,250 or more in England (The upper capital limit is £26,250 in Scotland and £24,000 in Wales), (including any 'notional capital' which the council believes you deprived yourself of) you will be expected to pay all of your own care home fees until your capital drops below this amount. After this, you will still need to pay some of the fees yourself, but the council may cover the rest (see below).

Good to know

If you don't have access to the 'notional' capital that has been included in your financial assessment and you are unable to pay the care fees, the council may have to step in and help pay your fees. However, they will only do this if your care needs assessment showed that you need to be in a care home. The council may pursue any accruing debt from you or another person if you transferred your capital to them to avoid care fees.

If you don't have a lot of capital or savings

If you have capital or savings of more than £14,250 (in England) but less than £23,250, the savings you have between these two amounts will be counted in your financial assessment. You will be charged £1 extra per week for your

care home fees for every £250 in savings you have over £14,250 (This does not apply to Wales where there is no tariff income). For example, if you have £16,500 in savings, you will pay £9 a week extra towards your care fees than you would if your savings were below £14,150.

This is called a 'tariff income' from your savings and is added to the contribution you make from your actual weekly income, to give your total weekly contribution to the fees.

If you have capital less than £14,250 in England (The lower capital limit is £16,250 in Scotland. There is only one capital limit in Wales of £24,000.), your savings will not be included in your financial assessment. You can spend this capital as you wish. You will still have to contribute most of your weekly income (state pension, occupational pension etc.) towards your care home fees, but you will be left with at least the Personal Expenses Allowance (£24.90 per week in England. The personal expenses allowance is £25.05 per week in Scotland and £25.50 per week in Wales).

See our factsheet: **Care home fees – paying them in England** (0800 319 6789, independentage.org) for information about the financial assessment and ways to pay your fees.

Future changes in England

The Care Act, which became law in England in May 2014 means that there will be changes to the way that adult social care funding works. The planned changes include:

- a cap of £72,000 (to be introduced April 2020) - on the amount an individual retired person will have to pay to meet their assessed social care needs during their lifetime. This does not include 'hotel costs' (for your room and food) of up to £12,000 a year which you can still be charged once you have hit the cap. The cap will not be backdated – so only your spend on care from the time the cap is introduced will be counted

- an increase in the amount of savings and capital you can have before you must pay all of your care costs – the new capital threshold for people moving into a care home will be £118,000 (in April 2020 - and the lower capital limit will be £17,000). These figures may change every year.

See our factsheet '**What does the Care Act mean for me?**' for more information (0800 319 6789, independentage.org).

3. Decisions about deprivation of capital

The decision about whether deprivation of capital has occurred is often made at the time of the financial assessment. It can also be made later if the council finds out at a later date that, for example, someone bought a lot of expensive jewellery or art just before their financial assessment.

Good to know

There is no time limit on how far back the council can look at your financial affairs to see if 'deprivation of capital' has occurred.

What the council must consider

There may be many reasons for someone giving away an asset. The council should consider the following before deciding whether deprivation of capital has occurred:

- Whether avoiding care and support charges was a significant motivation for you when giving away an asset
- The timing - at the point when you disposed of the capital, could you have foreseen that they would need care and support?
- Did you expect that you would need to contribute towards the cost of meeting your eligible care needs?

E.g., it would be unreasonable for the council to decide that a person had disposed of an asset in order to reduce the charges for their care and support needs if at the time they were fit and healthy and could not have foreseen the need for care and support.

An example

If Ciara purchases some jewellery worth £5000 the week before she goes into a care home and gifts it to her daughter, this may be seen by the council as depriving herself of capital

to avoid care fees and they may treat her as still having the capital in the financial assessment.

If however she had owned the jewellery for a number of years and she gifted it at this time, it may not be seen as deprivation of capital because personal possessions are not included in the financial assessment.

You can see more examples in the next chapter.

4. Examples of what may be seen as deprivation of capital to avoid care fees

Example: transfer of savings to someone else

Susan is 80 and started getting care at home about two years ago when she began having falls. Soon after this, she transferred a large portion of her life savings to her son. She now needs to move into a care home.

Example: excessive spending

Joe is 72 and gets some support from his local council to help him stay independent at home after suffering a stroke. Six months ago he spent a large amount of money on a piece of artwork, which he had never done before. He now needs to move to a care home following another stroke.

Why might this be considered deprivation of capital to avoid care fees?

A council may consider that Susan and Joe have deprived themselves of capital because:

- Susan and Joe were already receiving social care support. The council may decide that it would be reasonable for them to have considered that they may need to move in to a care home in the 'near future', and the timing may have amounted to an attempt to avoid paying care fees.
- this was not 'normal spending' for Susan and Joe. The amount of money Susan gave to her son was much more than she has given him in the past. Joe's spending on art was a one-off. As these were not part of a usual pattern of spending for both Susan and Joe, the council may feel these were deliberate acts to avoid care home fees.

The council could decide to assess Susan and Joe as if they still had the money they had given away or spent (i.e. notional

capital). If so, they then need to decide whether to pursue any accruing debt for care fees from the resident Susan and Joe, (or in Susan's case, from her son who received her capital).

An example of what may be seen as 'normal spending'

Malik is due to move in to a care home. He has savings over £23,250, so he is due to pay all of his care home fees himself. Before his move, he continues to spend his money in the way he normally would – buying small gifts for his grandchildren, treating himself to nights out with friends, and paying for carers to come and help him at home.

The council may decide that Malik has not been depriving himself of capital, because his pattern of spending did not change (i.e. - was normal for him), and was not 'extravagant' or an attempt to avoid paying care fees. This means that if Malik's capital falls below the threshold of £23,250, the council may accept responsibility for contributing towards his care home fees.

Example: Transfer of property into someone else's name

Ruth 'gifted' her property to her grandchildren a year or so before she moved into a care home, when she was already getting some support at home. The council ruled that she had deprived herself of this capital, because they could not see a good reason why she did not leave the property to her grandchildren in her will, rather than transferring the property to them now.

This meant that when the council carried out the financial assessment to see what Ruth should contribute towards her care home fees, they treated Ruth as if she still owned the house. As a result, she was seen as having enough capital to pay all of her care home fees herself.

(This example is loosely based on the case law of **Yule vs South Lanarkshire Council** - scotcourts.gov.uk/opinions/P32_149_97.html).

Court rulings

When previous cases have been taken to court, the courts have reached different decisions in different cases based on the particular circumstances of each case. In a similar case to that of Mrs Yule - (**R Beeson v Dorset County Council**) - it was decided by the court that deprivation of capital had not taken place. Mr Beeson was getting care at home, arranged by the council. He decided to transfer his property to his son, and two years later his care needs got worse and he needed to move into a care home. The council saw this as deprivation of capital, but the case was taken to court by Mr Beeson.

The court decided that the council was unable to produce sufficient evidence (such as correspondence and documents linked to the financial assessment), which could be used to 'reasonably' suggest that Mr Beeson had transferred his house to his son in large part to avoid his capital being taken into account in the care home fees financial assessment.

Good to know

Rulings made in some previous legal cases suggested that any decision by the council that deprivation of capital has occurred should be 'reasonable' and based on all the available evidence.

It is still to be seen whether previous judgments will still be referred to now that the Care Act has been introduced in England, which sweeps away old legislation and provides new guidance for local councils.

Remember...

It's not possible to make a definite statement about what you can spend your capital on before moving into a care home - it is a complicated area.

It is up to the council to use its judgment based on the information available to decide whether or not someone has purposefully deprived themselves of capital to avoid paying care fees.

Each case will be seen on its own merits and based on individual circumstances.

5. What if I disagree with the council's decision?

To challenge a decision of deprivation of capital by the council, you may want to start by getting free legal advice to see if you might have a case against the council. This is because some legal challenges must take place fairly soon after the original decision was taken by the council (e.g., a Judicial Review must generally take place within three months).

To do...

You could contact either via Civil Legal Advice (0345 345 4345, gov.uk/civil-legal-advice) or the Disability Law Service (0207 791 9800, dls.org.uk). See chapter nine for more contact details.

Another way to challenge the decision would be to go through the council's complaints process – you generally have 12 months to do this from the date of the council decision.

But starting off by making a complaint may stop you being able to get a Judicial Review of the council's decision if you want to, so you may want to get free initial legal advice about which option would be more appropriate in your case: making a complaint, or a legal challenge.

See our factsheet: **Complaints about care and health services in England** for more information about the council complaints process (0800 319 6789, independentage.org).

6. What if my property is mentioned in my will?

A will and the terms in it only take effect once the person who made the will passes away. This is known as when the will is 'executed'. If you move to a care home, the council will usually take your property and any other assets you have (even if they are subject to the terms of the will) into account in the financial assessment for care home fees.

This is because at the time of the financial assessment, the property/assets have not been transferred because the will has not been 'executed', so they still belong to you.

To do...

If you are concerned about the impact that you moving into a care home will have on the assets in your will, you may want to get legal advice from one of the organisations listed in chapter nine.

7. Inheritance tax allowance

As we understand it, if you use the inheritance tax allowance of £3,000 per year to 'gift' to family or friends, the council may still view this as deprivation of capital when carrying out your financial assessment for care home fees.

This is because there is no link between this 'allowance' and the charging guidance for care homes.

8. Advantages to keeping your capital

There are many advantages to keeping your capital and property, and choosing to pay for your care home fees in full if you are able to. These advantages include:

- **choice and independence**

If you are paying your own fees, you can choose any care home that meets your care needs - you don't have to get agreement from your local council that your care needs meet the eligibility criteria for council support, or that your chosen care home is suitable for your needs.

Nevertheless, we recommend that you do ask for a needs assessment from social services first, no matter how much capital you have. This is because if your capital eventually reduces to £23,250, you will need to be assessed by social services to see if you qualify for their support, before you can get financial help towards the fees. From April 2020, you will also need to have had an assessment by the council for what you spend to count towards the care cap (see chapter two).

Also, if you are paying for your own care home place, you don't have the same financial restrictions as council-funded care home residents. This means you don't have to choose a care home which is within the budget of what the council is prepared to pay for someone with your assessed care needs (the council calculates this amount when you have a needs assessment – it is called your personal budget). Not all care homes will accept the amount that the council thinks is appropriate to meet your needs in a care home, which means that your choice of care home may be restricted.

However, the council must be able to demonstrate that it can meet your care needs and offer genuine choice with the amount of money they have calculated for your personal

budget, otherwise they need to increase that amount. With your own capital, you may have a far broader choice.

- **disposable income**

If you are able to pay for your own care home placement without the council being involved, your disposable income is not restricted and you can spend more than the Personal Expenses Allowance (PEA) of £24.90 a week (in England), as long as you bear in mind the information on deprivation of capital.

All council-funded care home residents generally have only their PEA to spend on anything not covered in their care home contract – including toiletries, stationery or small presents for friends and family. This is because any money they have above this amount is generally used as a contribution towards their care home fees. The PEA will usually only be increased if individuals can make a case to the council as to why they need the extra allowance.

With your own capital, you are not restricted to the PEA and may therefore have more disposable income.

- **emotional and social benefits**

Keeping your capital may also be beneficial to you on a social, psychological and emotional level. E.g., if you enjoy going out and meeting friends for dinner, or buying gifts for grandchildren, you're far more likely to be able to continue doing this if you keep your capital than you would be able to if your income was restricted to the PEA.

9. Getting legal advice

We are not specialist legal advisers. The information set out above is the result of research from the relevant regulations and policy guidance so you may want to get more expert and in-depth legal advice if it becomes necessary.

If you are in dispute with your council about whether deprivation of capital has occurred, you may want to contact Civil Legal Advice to find a solicitor specialising in community care law. They can also advise on whether you might qualify for legal aid (0845 345 4345, gov.uk/civil-legal-advice).

The Law Society website also provides contact details of solicitors in your area (020 7320 5650, lawsociety.org.uk). Free initial legal advice may also be available via the Disability Law Service (0207 791 9800, dls.org.uk) and The Bar Pro Bono Unit (0207 092 3960, barprobono.org.uk).

10. If you live in Scotland, Wales or Northern Ireland

This factsheet covers how the care funding system works in England. The rules may be different in other parts of the UK.

For more information about the treatment of savings and capital when paying care home fees in your area, contact one of the following organisations.

In Scotland

- Care Information Scotland (0800 011 3200, careinfoscotland.co.uk)
- Silverline Scotland (Age Scotland) (0800 4 708090, thesilverline.org.uk/what-we-do/silver-line-scotland/)
- Scottish Legal Aid Board (0845 122 8686, slab.org.uk/public/index.html) - they can advise on legal aid and signpost to specialist social care solicitors.

In Wales

- Age Cymru (0800 022 3444, ageuk.org.uk/cymru)
- Civil Legal Advice (0345 345 4345, gov.uk/civil-legal-advice)
- Disability Law Service (0207 791 9800, www.dls.org.uk).

In Northern Ireland

- Age NI (0808 808 7575, ageuk.org.uk/northern-ireland)
- AdviceNow - network of independent general and specialist law centres (0289 064 5919, advicenow.org.uk).

This factsheet has been put together by Independent Age's expert advisers. It is not a full explanation of the law and is aimed at people aged over 60.

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