

Deprivation of assets

About this factsheet and who it is for

Deprivation of assets is the process of hiding, giving away or otherwise spending assets in such a way as to avoid paying for care home fees. This factsheet aims to clarify exactly how local authorities regard the gifting of assets in the financial assessment for care home fees.



The artwork on the front of this factsheet was done by an older artist for EAC's over 60s Art Awards.



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Introduction

A question that is asked by many people, and their families, when facing the possibility of care costs, is whether they are able to gift any of their assets to family and friends.

If a person has capacity to make their own decisions about finances and is under no duress or pressure to give their money away, then legally then can do whatever they wish with their money in relation to paying for care.

However, if that person is already requiring care, or it is reasonable to foresee that they may need a care home in the future, then **deliberate deprivation of asset rules** must be considered.

Deprivation of asset rules may apply when you approach the local authority for help with meeting the cost of a care home. If they feel that you have given away or used up assets in such a way as to avoid it being used to pay for care, then they may act as though you still have the asset or might even attempt to recover it from the party it was given to.

Gifting your property

For many people, their home is their main financial asset and they want to ensure that it is passed on to their children or

other family members. In order to avoid care costs consuming the equity of a property, many older people consider signing it over to family members whilst they are still living there.

It is important to seek independent financial advice before making such a decision, consider the position if you gave it to a family member and any of the following happened:

- They mortgaged the property and didn't keep up the payments, or after the mortgage was paid off there was insufficient capital left to buy more suitable accommodation should you wish to move
- They were to become bankrupt
- They were to divorce and it became part of the divorce settlement
- You had no right to occupy it and were asked to leave
- You wanted to sell it and move to another property but your family member didn't want you to
- You meet a new partner who you wanted to move in with you, but the family didn't like them
- You needed to move into a care home but the choice of care home the local authority would fund for you is not the one you would choose yourself if you were paying for it

- You wanted to improve your lifestyle through releasing some of the capital tied up in your home.

The above are just some of the situations that could arise and could very much restrict the way you live your life in retirement and the freedom of choice that owning your own property brings with it.

Having considered the above alone it would not be recommended to give away your home. Couple this with the way deprivation of assets is viewed by the state, it could also make the whole exercise pointless if the reason for making the gift was to avoid paying for care.

If care home funding is being sought from the local authority and they identify that an asset has been deliberately given away to avoid paying for care then it is almost certain that the value of that property will still be counted in the means test.

When carrying out the financial assessment for care home funding the council will ask a question similar to: “Do you or have you ever owned a property?” If the answer is “Yes” and you have given it away they would then make enquiries as to the reasons why you gifted the asset. If it was considered that a significant reason for gifting the asset was to avoid paying for care home

accommodation they may treat you as if you still owned it or attempt to reclaim it from the new owner.

Other assets

The information below is extracted from the guidance given by government for local authorities to adhere to when considering deprivation of assets.

The local authority should only consider questions of deprivation of capital when the person in the care home ceases to possess capital which would otherwise have been taken into account. Examples of where a person has deprived themselves of capital could be:

- A lump-sum payment has been made to someone else (e.g. as a gift or to repay a debt)
- Substantial expenditure has been incurred (e.g. on an expensive holiday)
- The title deeds of a property have been transferred to someone else
- Money has been put into a trust which cannot be revoked
- Money has been converted into another form which may be disregarded (e.g. personal possessions)
- Capital has been reduced by living extravagantly

- Capital has been used to purchase an investment bond with life insurance so that it would be disregarded for the purpose of the Assessment of Resources Regulations.

What is considered a deprivation?

There are two main factors that a local authority will consider when determining whether a deprivation has occurred, **motive/purpose** and **timing**.

There may be more than one motive for disposing of a capital asset only one of which might be to avoid a charge for accommodation. Avoiding the charge need not be the main motive but it must be a significant one for it to be considered as deprivation.

With regards to timing, the guidance states that:

6.070: ...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 a move to residential accommodation.

Examples given in the guidance which may or may not be considered as a deprivation of assets include:

- A person moves into residential accommodation and has a 50% interest in property which continues to be occupied by his spouse, or civil partner. The local authority ignore the value of their share in the property while their spouse lives there but the spouse decides to move to smaller accommodation and so sells the former home. At the time the property is sold, the 50% share of the proceeds could be taken into account in the charging assessment but, in order to enable the spouse, or civil partner, to purchase the smaller property, the partner in the care home makes part of their share of the proceeds from the sale available to their spouse, or civil partner. In these circumstances it is considered that it would not be reasonable to treat the person as having deprived himself of capital in order to reduce their residential accommodation charge.
- A person has £24,000 in the bank. He is about to move permanently to a residential care home, and before doing so, pays off £3,500 outstanding on a loan for home improvements. It would be reasonable in these circumstances not to treat him as having deprived himself of the £3,500 deliberately in order to reduce his residential accommodation charge.
- A person has £18,000 in a building society. Two weeks before entering the home, he bought a car for £10,500,

which he gave to his son on entering the care home. If the person knew they were to be admitted permanently to a care home at the time they bought the car, it would be reasonable to treat this as deliberate deprivation. However, all the circumstances must be taken into account. If he was admitted as an emergency and had no reason to think he would not be in a position to drive the car when he bought it, it may not be reasonable to treat it as deliberate deprivation.

If there has been a deprivation

In short, the local authority has three options if they conclude that a deprivation of assets has occurred:

Notional capital: The local authority will act as though you still have the asset; this is a very effective way of dealing with relatively small deprivations. However if a resident's actual assets reach £0 then the local authority will still have a legal duty to meet their assessed needs and will therefore have to ensure that the care fees are paid.

Example Mrs A moves into a care home and gives her three children £2,000 each to avoid it being used to pay for care. The local authority identifies the deprivation and applies notional capital rules meaning that she is seen as having £6,000 more than she actually owns. In practice

this means she will not be entitled to local authority assistance until her savings reach £17,250, rather than £23,250.

Powers of recovery: If the transfer took place within six months of you needing care then the council can turn to the recipients of the gift and reclaim the cost of your care from them. The local authority is given these powers under the *Health and Social Services and Social Security Adjudications (HASSASSA) Act 1983*.

Insolvency Act: If a deprivation is considerable in value but does not satisfy the 6 month rule for powers of recovery, then the local authority might attempt to recover the money through the courts by using the Insolvency Act. There are very few instances this legislation being used but this may increase due to budget restrictions for local authorities.

How can I challenge a decision?

If you believe the local authority have reached the wrong decision regarding whether there has been a deprivation, you should obtain a written reason for their decision and challenge it through the council's formal complaints procedure.

Conclusion

In short, there is no fool proof way of gifting assets to avoid paying for care, through trusts or otherwise. As mentioned above there are numerous possible pitfalls and if you did need to move into a care home, having your own money to pay for it will very much open up the choice of care homes you might wish for.

The chances of needing to move into a care home are quite small, particularly as it is government policy to enable people where possible to receive the care they need in their own homes. However, if a care home should be needed there are ways of paying which may not necessarily use up all of your capital.

Combining advice to maximise the support you are entitled to from the state with appropriate financial advice could go a long way in mitigating care costs. There are especially designed financial products for meeting care costs, for example, Immediate Need Care Fee Payment Plans may make it possible to meet care costs for as long as care is needed whilst using up only part of your available capital.

Care funding from April 2020

The following changes to the way in which care and support is funded was due to be implemented in April 2016, but has now been postponed until 2020 by Government.

A £72,000 cap on care costs

This will come into effect from April 2020 and effectively ‘caps’ the amount you should spend on *care* in your lifetime.

Every person receiving care will have a ‘care account’ managed through social services which will ensure that contributions you make towards your care from April 2020 are counted towards the cap. It is important to be aware that only care you have been assessed as needing, up to the cost of what the local authority would usually pay for this service, will contribute to the £72,000.

For care home residents, it is important to note that only the ‘care’ element of your bill will contribute towards this cap. You will always be expected to pay towards the care home’s ‘hotel costs’ (such as bed & board), which do not count towards the £72,000 cap. These costs are likely to be set at a figure of £12,000 per year (£230 a week).

An increase in the upper capital limit from £23,250 to £118,000

This will come into effect from April 2020 and effectively means you may be entitled to financial assistance from your local authority sooner than you would be under the current system.

The current lower capital limit of £14,250 is also rising in April 2020 to £17,000. This is the minimum figure that must be disregarded when calculating your assets.

However, it is important to remember that your capital between £118,000 and £17,000 is still taken into account to form an ‘income’ at a rate of £1 for every £250 that you have (this is equal to £404 per week for those with assets of £118,000); this is then combined with your actual income from pensions and state benefits. If this total income figure is higher than the council’s personal budget for you, then you may not be entitled to any financial support.

About FirstStop Advice

FirstStop is a free information and advice service designed to help older people decide how best to meet their needs for support, care and suitable housing. It is provided jointly by a growing number of national and local organisations and it is led by the charity, Elderly Accommodation Counsel (EAC).

About FirstStop Financial Advice

Working together, EAC and its partners in FirstStop Advice provide comprehensive information and guidance to help you afford the care, accommodation or services you need.

FirstStop's national Advisors are trained to advise on:

- What you may be entitled to in state benefits and financial help from your local authority;
- Whether you may be entitled to help with your care costs;
- Ways of making your income and capital go further;
- Services that are provided free by local and national voluntary organisations;
- Homesharing, co-housing and other mutual support networks.

A key FirstStop partner organisation is the *Society of Later Life Advisers (SOLLA)*.

SOLLA's members are regulated Financial

Advisers who specialise in providing financial advice to older people, they also adhere to the Society's Code of Best Practice.

If you decide, after speaking to us, that you would like advice from a SOLLA member, we can provide local details to you.

(Neither EAC or FirstStop has any financial interest in SOLLA or its member IFAs)

Contact us

- Visit us online: www.housingcare.org

The information contained in this factsheet is intended to be, and should be regarded as, a brief summary and is based on our understanding of present legislation, regulations and guidance. No responsibility can be accepted for action based on this information.

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