advice and support for older age
Independent Age

Factsheet

Your assets and the financial assessment for care home fees

If you need help from the council to pay care home fees, this factsheet looks at what happens if you transfer your property, spend large sums of money or do anything else to reduce your assets before moving into a care home. If the council thinks you did this deliberately to avoid paying fees, they may view it as deprivation of assets and it can affect your entitlement to support. This factsheet focuses on paying care home fees but the same rules also apply to other care services.

Call FREE on **0800 319 6789** Visit **www.independentage.org**

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About Independent Age

Whatever happens as we get older, we all want to remain independent and live life on our own terms. That's why, as well as offering regular friendly contact and a strong campaigning voice, Independent Age can provide you and your family with clear, free and impartial advice on the issues that matter: care and support, money and benefits, health and mobility.

A charity founded over 150 years ago,
we're independent so you can be.

The information in this factsheet applies to England only.

If you're in Wales, contact Age Cymru
(0800 022 3444, agecymru.org.uk)
for information and advice.

In Scotland, contact Age Scotland
(0800 12 44 222, agescotland.org.uk).

In Northern Ireland, contact Age NI
(0808 808 7575, ageni.org).

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1. Care home fees – assessing your contribution

Paying for a care home can be complicated. If your council agrees that a care home would be best for you, they will assess your assets to decide what contribution you should make to your care home fees. Assets are your income and capital (which includes your savings, investments and property). The higher your income and capital are, the more money you will be expected to pay towards your fees.

Councils must follow government guidance, which recognises that you are free to spend your own money as you wish, including making gifts to friends and family. However, you are also expected to make a fair contribution towards your care and support costs.

When the council carries out the financial assessment, if they suspect that you have deliberately tried to avoid charges or reduce the amount you have to contribute to your care costs, they can investigate to see if there is evidence of 'deprivation of assets' (see chapter 1).

This factsheet looks at:

- What is meant by deprivation of assets (chapter 2)
- How deprivation of assets affects the financial assessment (chapter 3)
- How the council decides (chapter 4)
- What happens if you owe the council money (chapter 6)
- The advantages of keeping your assets (chapter 9).

2. What is deprivation of assets?

Deprivation of assets means that you have deliberately tried to dispose of your assets in order to avoid charges or reduce the amount you have to contribute towards your care costs. There are many ways this could happen. Typical examples include:

- making a lump-sum payment to someone else, for example as a gift
- extravagant spending that is out of character, including charitable donations
- transferring the title deeds of a property to someone else
- putting your assets into a trust that cannot be revoked
- using your assets to buy an investment bond with life assurance
- buying expensive items that would then be disregarded as personal possessions in the financial assessment
- selling an asset for less than its true value.

When deciding if this is deliberate deprivation of assets, the council must take into account the timing and the reasons for the transfer, spending or gift. They should not assume that deprivation has occurred as there could be valid reasons why you no longer have an asset.

The council will then have to decide if a significant reason for disposing of an asset was to avoid paying care home fees. This means that you must have known that you would need care and support at that time. If they decide that you did, this is deprivation of assets.

3. How deprivation of assets affects the financial assessment

The financial assessment (sometimes called a means test) works out how much you may have to contribute to your care home fees. It looks at:

- your income
- your savings and capital
- certain benefits
- the value of your home if you own it.

Notional capital and income

If the council decides that you deprived yourself of assets to avoid paying care fees, they will act as if you still had the asset and include its full value in your financial assessment. This is called notional capital or notional income.

If you no longer have the asset, this could mean that you are expected to pay more towards your care home fees than you can afford.

What you will have to pay

If you have assets of £23,250 or more, including any notional capital, 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.

If you have capital or savings of more than £14,250 but less than £23,250, the council will contribute towards your care home fees, but you will also have to pay towards them. You will pay £1 per week for your care home fees for every £250 in

savings you have over £14,250. You will also have to contribute most of your weekly income.

If you have capital of less than £14,250, you won't have to use this money to pay your care home fees. The council will pay your care home fees. 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).

See our factsheet **Paying care home fees** (0800 319 6789, independentage.org) for more information about the financial assessment and ways to pay your fees.

Good to know

If you don't have access to the notional capital or income 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. The council may pursue you (or the person you transferred your asset to) for the money you owe them (see chapter 6).

Future changes – the care cap

The government plans to introduce a cap on the amount people have to pay for care costs in their lifetime. This cap, originally due to be introduced in 2016, has been postponed until 2020.

4. Deprivation of assets – how the council decides

When the council carries out the financial assessment they will ask about previously owned assets as well as those that you currently own.

It's up to you to prove to the council that you no longer have an asset. If you are not able to, the council must assess you as if you still have it. For capital assets, acceptable evidence would be:

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

The council usually decides whether deprivation of assets has occurred at the time of the financial assessment but they could decide this later if, for example, they discover that you bought a lot of expensive jewellery or art just before your 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 assets has occurred.

What the council must consider

There are many reasons why someone might give away an asset. The council should consider the following before deciding whether deprivation of assets has occurred:

- motive/intention - was avoiding care and support charges a significant motivation for you when giving away an asset?
- timing - when you disposed of the asset, could you have foreseen that you would need care and support?
- anticipation - did you expect that you would need to contribute towards the cost of your eligible care needs?

For example it would be unreasonable for the council to decide that you had disposed of an asset in order to reduce the charges for your care and support needs if at the time you 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 assets to avoid care fees and they may treat her as still having the capital in the financial assessment.

However, if 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 assets because personal possessions are not included in the financial assessment.

You can see more examples in the next chapter.

Deprivation of assets if you have power of attorney or deputyship

A power of attorney or deputyship order gives someone you trust the legal power to deal with your affairs and make decisions on your behalf. The same rules about deprivation of assets apply if you have either a Lasting Power of Attorney or Deputy for Property and Affairs. A gift made on behalf of someone must be in their best interests, can only be given to a

family member, friend or acquaintance on a customary occasion (for example a birthday) or a charity, and must be reasonable. Contact the Office of the Public Guardian (0300 456 0300, gov.uk/government/organisations/office-of-the-public-guardian) for further information and advice about making gifts on behalf of another person.

5. What may be seen as deprivation of assets

These examples are for illustrative purposes only. Each case will be considered on its own merits according to individual circumstances.

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 having 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 money for care fees from 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. it 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 where deprivation has not occurred

Max has moved into a care home and has a 50% interest in a property that continues to be occupied by his civil partner, David. The value of the property is disregarded while David still lives there, but he decides to move to a smaller property that

he can better manage and so sells their shared home to fund this.

At the time the property is sold, Max's 50% share of the proceeds could be taken into account in the financial assessment, but, in order to ensure that David is able to purchase the smaller property, Max makes part of his share of the proceeds from the sale available.

In such circumstances, it would not be reasonable to treat Max as having deprived himself of capital in order to reduce his care home charges.

Example of assets to be considered

Mrs Kapoor has £18,000 in a building society and uses £10,500 to purchase a car. Two weeks later she enters a care home and gives the car to her daughter Julie.

If Mrs Kapoor knew when she purchased the car that she would be moving to a care home, then deprivation should be considered. However, all the circumstances must be taken into account so if Mrs Kapoor was admitted as an emergency and had no reason to think she may need care and support when she purchased the car, this should not be considered as deprivation.

Remember...

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

It's 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. If you are not sure whether

something may be viewed as deprivation of assets, speak to the council first.

6. What happens if I owe the council money?

If you have deprived yourself of assets and as a result you are unable to pay your contribution to your care home fees, you may end up owing the council money. The council can pursue those debts through the county court, but only after they have exhausted all other options.

Other options include:

- negotiating an agreement
- mediation
- arbitration.

Where a deferred payment agreement could be offered, the council must give you that option. In this case, they can only make an application to the county court if you have turned this option down.

See our factsheet **Care home fees and your property** for more information about deferred payment agreements (0800 319 6789, independentage.org).

Recovering charges from a third party

If you transfer assets to someone else (a third party), they may be liable to pay the council the amount that would have been due if you still had the asset available to you.

If you transfer an asset to more than one other person, each of these people is liable for their share of the debt.

Example:

Mrs Tong has £23,250 in her savings account. This is the total of her assets. One week before entering a care home she gives

her daughters Louisa and Jenny and her son Frank £7,750 each. This is with the sole intention of avoiding care and support charges.

If she hadn't given the money away, the first £14,250 would have been disregarded. She would have been charged £1 per week for every £250 of assets between £14,250 and £23,250. After ten weeks of care, Mrs Tong should have contributed £360. This means Louisa, Jenny and Frank are each liable for £120 towards the cost of their mother's care.

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

The council must take into account all relevant information and clearly explain in writing why they have reached their decision. If you disagree, you have the right to challenge that decision.

You may want to start by getting free legal advice to see if you have a case against the council and to decide the best course of action. Your options include:

- using the council's complaints procedure
- applying for a judicial review
- contacting the local government ombudsman (LGO).

If you use the council's complaints procedure or the LGO (0300 061 0614, lgo.org.uk), you usually have 12 months to do this from the date of the council's decision.

A judicial review can be a fast and effective way to get the council to reconsider its decision but it must take place within three months. If you've already started by making a complaint, you may not have enough time to follow this course of action later.

Taking legal action could be stressful and expensive. It's a good idea to get advice first before you decide which option you want to take (see chapter 10).

To do...

You might be able to get free initial legal advice through a Law Works legal advice clinic (lawworks.org.uk), or from the Disability Law Service (020 7791 9800, dls.org.uk).

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

8. Protecting your family's inheritance

Some people may transfer or give away their assets because they want to protect their family's inheritance. However, it's important to understand the possible consequences of gifting assets and get legal advice before you take action.

What if my assets are mentioned in my will?

A will only takes effect once the person who made the will dies. If you move to a care home, the council will usually take your property and any other assets into account in the financial assessment for care home fees, even if they are subject to the terms of the will.

To do…

If you're concerned about the impact that moving into a care home will have on the assets in your will, you may want to get legal advice (see chapter 10).

Inheritance tax allowance

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.

9. Advantages to keeping your assets

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.

Choice and independence

If you're paying for your own care home place, you don't have the same financial restrictions as council-funded residents. 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, it's a good idea to ask for a care needs assessment from social services first, no matter how much capital you have. If your capital eventually reduces to £23,250, you'll need to be assessed by social services to see if you qualify for their support, before you can get financial help towards the fees.

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. However, when looking at possible care homes, it is still a good idea to ask what the council would be prepared to pay for you. If you choose a more expensive home and your capital eventually reduces to £23,250, you may be asked to move to a cheaper home.

Disposable income

Council-funded care home residents generally have only their Personal Expenses Allowance (PEA) of £24.90 a week to spend on anything not covered in their care home contract – including toiletries, stationery or small presents for friends and family.

Any money they have above this amount is used as a contribution towards their care home fees.

If you're able to pay your own care home fees, your disposable income is not restricted and you can spend more than the PEA, bearing in mind the information on deprivation of assets.

Emotional and social benefits

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

Unforeseen consequences of reducing your assets

The rules on deprivation of assets are complicated and may be more strictly applied by some councils than others. It could be pointless giving your assets away if they are later counted in the financial assessment anyway. There is no foolproof way of avoiding your assets being taken into account.

Relationships can change. You may transfer ownership of your property to a relative but continue to live there, for example, and then find that they can't keep up the mortgage payments or they divorce and the property is part of the settlement, or they ask you to leave and you have no right to occupy.

You might not need care in future and then you would have deprived yourself of the asset unnecessarily. If you wanted to release equity from a property to improve your lifestyle, you would no longer be able to do so.

10. Getting legal advice

We are not specialist legal advisers. The rules about deprivation of assets are complicated and you are strongly advised to seek specialist advice if necessary, for example if you are in dispute with your council about whether deprivation of assets has occurred.

Getting legal advice can be expensive. If you decide to get legal advice, you may want to contact Civil Legal Advice (0345 345 4 345, gov.uk/civil-legal-advice) to find out whether you would qualify for legal aid. They can also give you details of other organisations or solicitors specialising in deprivation of assets.

You can also find legal specialists through the Law Society (020 7320 5650, solicitors.lawsociety.org.uk).

Make sure you use a solicitor who specialises in the relevant area of law (such as community care law), even if there are none very local to you. Most specialist solicitors are experienced at working from a distance.

You might be able to get free initial legal advice through a Law Works legal advice clinic (lawworks.org.uk), or from the Disability Law Service (020 7791 9800, dls.org.uk).

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Independent Age would like to thank those who shared their experiences as this information was being developed, and those who reviewed the information for us

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