Independent Age

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Patient Information Forum

Factsheet

Can I protect my assets if I need care?

If you need help from the council to pay for your care, you'll usually have a financial assessment to work out how much you should pay towards the costs. You might be tempted to spend your money or give away property so the amount you have to pay is reduced. However, there are strict rules to stop you from doing this.

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 or using 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.

While some of information may apply across the UK, this factsheet covers England only.

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

In Scotland, contact Age Scotland (**0800 12 44 222**, **ageuk.org.uk/scotland**).

In Northern Ireland, contact Age NI (**0808 808 7575**, **ageuk.org.uk/northern-ireland**).

In this factsheet, you'll find reference to our other free publications. You can order them by calling **0800 319 6789** or by visiting **www.independentage.org/publications**

Contents

This factsheet contains general information but we are not specialist legal or financial planning advisers. The rules about deprivation of assets are complicated and we strongly advise you to seek specialist advice if necessary. For example, if you are making financial plans for the future or you are in dispute with your council about whether deprivation of assets has occurred.

1. Do I have to pay for my care?

Paying for the care you need can be expensive and the system for working out what you pay can be complicated. After your local council has worked out what your care needs are (see our factsheet **First steps in getting help with your care needs**), they will look at your finances to decide what you should pay towards the cost of your care.

The council will look at your assets in a financial assessment. Assets are your income and capital (which includes your savings, investments and property). In general, the higher your income and capital, the more money you will have to pay towards your fees.

The financial assessment varies depending on whether you need care in your own home or in a care home. For example, if you need care at home, the value of your home won't be included in the financial assessment while you are living in it – but if you need care in a care home, it might be included. For more information, see our factsheets **Getting a financial assessment for care at home** or **Paying care home fees**.

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

If the council suspects that you've deliberately tried to avoid charges or reduce the amount you may have to pay towards your care costs, they can investigate to see if there is evidence of 'deprivation of assets' (see chapter 2).

2. What is deprivation of assets?

Deprivation of assets means you've deliberately tried to get rid of your money or things you own to reduce the amount you have to pay towards your care costs. There are many ways you might do this, including:

- 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 – these aren't included in the financial assessment unless you've deliberately purchased them to deprive yourself of assets
- buying expensive items that would be disregarded as personal possessions in the financial assessment
- selling an asset for less than its true value.

The council will have to decide if the main reason for you disposing of an asset was to avoid paying for your care. If they decide that this was the case, this is a deprivation of assets. If you disagree with their decision, you may want to challenge it (see chapter 7).

Good to know

If you have used your capital or assets to pay off a debt, this does not count as deprivation, even if the debt you paid off wasn't due immediately.

3. What happens if the council thinks I've deprived myself of assets?

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

- your income, including your pensions and certain benefits
- your capital – for example, savings and investments
- if you need care in a care home, sometimes the value of your home if you own it.

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

This could mean that you will have to pay more towards your care than you can afford.

Good to know

Changes to the rules about how people can access their personal pensions have affected how some types of pension are treated in the financial assessment. For example, notional income may be counted if:

- you've taken money from your pension pot as a cash sum
- you haven't bought an annuity
- you've chosen not to draw the maximum income from an annuity.

Contact the Pension Wise service at MoneyHelper for more information (**0800 138 3944**, **moneyhelper.org.uk/en/pensions-and-retirement/pension-wise**). You may want to get specialist financial advice.

What you will have to pay

If you have capital of £23,250 or more, including any notional capital, you will usually be expected to pay for all of your own care until your capital drops below this amount. This is known as self-funding, which is when you pay for all your care yourself.

Once your capital has dropped below this amount, you may be entitled to some help from the council. Let the council know some time before this happens in case there is a delay in getting a financial assessment from them.

If you have capital of between £14,250 and £23,250, you'll pay £1 for every £250 (or part of £250) of capital or notional capital you have above £14,250. This is known as tariff income.

If you need care in a care home, you'll also have to contribute most of your weekly income towards your care costs. But you must be left with £24.90 a week for personal use. This is called the personal expenses allowance.

If you have capital of less than £14,250, you won't have to use this money to pay for your care. The council will pay for your care. You'll still have to make a contribution from your weekly income.

If you need care at home and your weekly income is higher than your care costs, you may have to pay for all of your care yourself. If the council provides some funding but you also have to contribute, you should be left with enough income for your daily living costs, such as food and utility bills. This is called the minimum income guarantee. You must also be left with enough to cover your housing costs and any disability-related expenses.

The amount of income you're guaranteed will depend on your circumstances. For more information, read our factsheets **Getting a financial assessment for care at home** or **Paying care home fees**.

What happens if I no longer have access to my notional income or capital?

If you don’t have access to the notional income or capital that has been included in your financial assessment, you may be unable to pay the amount that the council says you should contribute to your care. In this case, the council must still make arrangements to provide you with care, as long as they are also paying towards your care costs.

If you'll be a self-funder (that is, you'll be paying for all your care yourself), the council must arrange care at home if you ask them to. If you need care in a care home, they can choose whether to help or not, unless you’ve lost mental capacity (see our factsheet **First steps in getting help with your care needs** for more information). In other circumstances, they can use their discretion to arrange your care. It would be difficult for them to refuse if you would otherwise be left without the care that you need.

However, if the council is arranging care services for you and you can’t afford to pay all the money you should towards your care, the council may claim the money you owe them from either you or the person you transferred your asset to. This should only be a last resort after they've tried all other options (see chapter 6).

Good to know

Notional capital decreases over time. Call our Helpline on **0800 319 6789** if you need advice on this.

4. How does the council decide if I've deprived myself of assets?

When the council carries out the financial assessment, they may ask about assets you used to own as well as those that you own now.

It's up to you to prove to the council that you no longer have an asset. If you're 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 expenses
- proof that debts have been repaid.

What the council must consider

There are many reasons why someone might give away an asset. The council should consider the following:

- motive/intention – was avoiding care and support charges one of your main reasons for giving away an asset?
- timing – when you disposed of the asset, could you have known that you would need care and support?
- anticipation – did you expect that you would need to pay towards the cost of your care?

For example, it may be unreasonable for the council to decide that you disposed of an asset to reduce the charges for your care and support if, at the time, you were fit and healthy and could not have foreseen that you would need care and support.

An example

If Ciara buys some jewellery worth £5,000 the week before she moves into a care home and gifts it to her daughter, the council may see this as Ciara depriving herself of assets to avoid care fees. 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 then given it to her daughter the week before she moved into a care home, it should not be seen as deprivation of assets. This is because personal possessions are not included in the financial assessment if they were not bought with the intention of avoiding care fees.

You can see more examples in the next chapter.

The council must give you a chance to explain your reasons for depriving yourself of an asset, but they don't have to accept your explanation. They may wish to investigate further. If they find evidence that they think shows you deprived yourself of an asset on purpose, they must give you a chance to have your say before making a final decision. They should give a reason for their decision.

The council usually decides whether deprivation of assets has happened during your financial assessment. But they could make this decision later if, for example, they discover that you bought a lot of expensive jewellery or art just before the 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 – unlike Inheritance Tax, there isn't a seven-year cap.

Deprivation of assets if you have power of attorney or deputyship

A power of attorney or deputyship order gives someone else 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 an enduring power of attorney, lasting power of attorney or a deputyship for property and financial affairs.

There are also strict rules about attorneys and deputies giving gifts. A gift made on behalf of someone must:

- be in their best interests
- only be given to a family member, friend or acquaintances on a customary occasion (for example, a birthday) or to a charity
- be reasonable.

To do

Contact the Office of the Public Guardian (**0300 456 0300**, **gov.uk/government/organisations/office-of-the-public-guardian**) for more information and advice about making gifts on behalf of someone else.

5. Examples of deprivation of assets

These examples are to show how deprivation of assets may work. However, each case will be judged individually and the council must consider what is reasonable.

Examples that may be seen as deprivation of assets

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. Susan was already receiving social care support and paying towards it.

The council may decide that she could have known that she might need to move into a care home in the near future. The timing of the transfer may have been an attempt to avoid paying care home fees. This was not normal spending for Susan; the amount of money she gave to her son was much more than she'd given him in the past. Taking all these factors into consideration, the council might feel this was a deliberate act to avoid care home fees.

The council could decide to assess Susan as if she still has the money she gave away (that is, notional capital). If so, they then need to decide whether to claim any money for care fees from Susan's son, who received her capital.

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 art, which he had never done before. He now needs a lot more care at home from visiting care workers following a second stroke.

Joe's council might decide that he has deprived himself of capital because he could have considered that he might need more care in the near future, and the timing may have been an attempt to avoid paying care fees.

Joe's spending on art was a one-off, not part of a pattern of usual spending. Therefore, the council might feel that this was a deliberate act to avoid paying for care.

The council could decide to assess Joe as if he still has the money he spent (that is, notional capital). If so, they then need to decide whether to pursue any money for care fees from Joe.

Example that may not be seen as deprivation of assets

Normal spending

Malik will soon be moving into 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 care workers 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 (that is, 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

Jane and Anne are civil partners and each have a 50% share in their house, which they jointly own. After a serious fall, Jane is admitted to hospital. Jane is assessed by the council as needing to move into a care home after hospital. The council doesn't include Jane's 50% share in the house in her financial assessment, because Anne is still living there.

A year later, Anne finds the stairs difficult to manage and decides to downsize and move to a bungalow. When the house sells, the council can now take Jane's 50% share of the proceeds into account. However, Anne can't afford to buy a bungalow using her 50% share alone. Jane is allowed to give some of the proceeds from her share to Anne so that she can buy a bungalow.

In these circumstances, the council decides not to treat Jane as having deprived herself of capital to reduce her care home fees. This is because Jane had a genuine reason for giving some of her share of the house proceeds to her partner.

Example of how timing is considered

Mr Modi has savings of £22,000 and buys a necklace for his daughter that costs £4,000. A week later he is admitted to hospital and then moves straight from the hospital into a care home.

Mr Modi was admitted to the care home in an emergency. Before this, there were no signs that this was going to happen. Therefore, the council decides that deprivation of assets has not occurred, as he could not have known that he would need care at this time.

If Mr Modi had been ill for some time before moving to the care home, the council might have concluded that he could have foreseen that he would need more care in the near future and had bought the necklace to reduce his assets.

Remember

It's not possible to say with absolute certainty what you can spend your money on before you need care without risking a deprivation investigation. It will always depend on all the circumstances and can be complicated.

It's up to the council to decide, based on the information available, whether or not someone has purposefully deprived themselves of income or capital to avoid paying care fees. They should give reasons for their decision.

If you're not sure whether something may be viewed as deprivation of assets, you can speak to the council first. If they tell you it won't be viewed in that way, ask for that to be confirmed in writing. You can use this as evidence if the issue comes up later.

6. What happens if I can't pay my contribution to my care costs?

If the council has decided that you've deprived yourself of assets and this means you're expected to pay more towards your care costs than you can afford, you may end up owing the council money. The council can claim those debts through the county court. But they should try all other reasonable options first, including:

- **negotiation** – a discussion with you to try to reach an agreement
- **mediation** – a process where a neutral third person helps both parties to discuss and resolve a dispute
- **arbitration** – a way to resolve disputes outside the court system, where you and the council appoint an arbitrator to make a binding decision.

If you'll be moving to a care home and a deferred payment agreement could be offered, the council must give you that option first. This is when you pay the council back at a later date – the terms are set out in your agreement with the council. In this case, they can only make an application to the county court if you've turned this option down.

See our factsheet **Care home fees and your property** for more information about deferred payment agreements.

Recovering charges from someone else

If you transfer assets to someone else such as a friend or relative, this person may be legally responsible for paying the council the amount that you would've had to pay if you still had the asset.

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

An example

Julia has severe arthritis and recently had a fall, breaking her hip. The council assesses her needs and decides that she would benefit from help in her home from a visiting care worker. Julia has £24,500 in savings and no other assets, so she would have to pay all of her care costs herself.

A week after her care needs assessment, Julia gives £5,000 each to her children, Patrick and Sophie. She does this to avoid paying for her care.

This leaves her with £14,500, which would mean the council would have to contribute to her care. However, the council realises that Julia has deliberately deprived herself of this money and recovers it from Patrick and Sophie to pay the care costs.

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

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

There are two main ways of trying to resolve disagreements:

- making a complaint through the council's complaints procedure
- using a solicitor to pursue a legal case.

You must make your complaint within 12 months of the problem occurring or of you becoming aware of it, although it's usually better to start the complaint as soon as possible.

If you decide to pursue a legal case, the time limit is much shorter. If it becomes necessary to start court proceedings, you'll likely need a judicial review. Judicial review proceedings must be started within three months of the date when there were first grounds for a legal challenge.

Remember

Issues can often be resolved informally, but there is a time limit to using these procedures. It's important not to miss it. Consider making a complaint or taking legal action at the same time as trying to sort things out with your social worker, so you don't miss the deadlines.

It's sometimes possible to pursue a late complaint or a late legal challenge.

More information, including how the time limits work, can be found in our factsheet **Complaints about social care services**.

To do

If you want specialist legal advice, you will need to find a solicitor who specialises in community care law. Getting legal advice can be expensive. If you decide to get legal advice, you may want to contact Civil Legal Advice (**0345 345 4345**, **gov.uk/civil-legal-advice**) to find out whether you would qualify for legal aid to help pay for this.

Whether or not you qualify for legal aid, the Civil Legal Advice service can give you details of organisations or solicitors specialising in community care law. You could also visit **find-legal-advice.justice.gov.uk** to find a solicitor.

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 or financial advice from an adviser with the right qualifications.

What if my assets are mentioned in my will?

A will only takes effect once the person who made the will dies. If you need care, the council will usually take your assets into account in the financial assessment, even if they are included in your will. This may include the value of your home if you're moving to a care home (read our factsheet **Care home fees and your property** for more information).

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 7).

Inheritance Tax allowance

If you use the Inheritance Tax allowance of £3,000 per tax year to 'gift' to family or friends, the council may still view this as deprivation of capital when carrying out your financial assessment.

This is because there is no link between this allowance and the legal rules on charging for care.

9. Advantages to keeping your assets

There are some advantages to keeping your capital and property, even if it means that you may have to pay your care costs in full.

Choice and independence

If you're paying for your own care service or care home place, you don't have the same financial restrictions as council-funded residents. You don't have to get your local council to agree that your care needs qualify for council support, or that your chosen care service is suitable for your needs.

However, it's still a good idea to ask for a care needs assessment from your local council before you get care services, no matter how much capital you have. If your capital eventually reduces to £23,250, you'll need to be assessed by adult social services to see if you qualify for their support, before you can get financial help towards the fees.

When looking at possible agencies for care at home or care homes, it's a good idea to ask what the council might be prepared to pay for someone with your care needs. If you choose a more expensive care service and your capital eventually reduces to £23,250, you may be asked to change care provider. Read our factsheet **Paying care home fees** for more information.

Emotional and social benefits

Keeping your capital may also be good for your wellbeing. If you enjoy going out, meeting friends for dinner or buying gifts for your grandchildren, for example, you're more likely to be able to continue doing this if you keep your capital. If the council paid your care fees, your income would be restricted to the personal expenses allowance – see page 7.

Problems you could face when you reduce your assets

Even if you have a good reason to transfer some of your assets, you should think carefully about the possible consequences.

For example, you may transfer ownership of your property to a relative and continue to live there, 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 stay. You would also no longer be able to release equity from the property.

To do

Get independent financial planning advice if you're thinking of transferring your assets.

Contact the Society of Later Life Advisers (**0333 2020 454**, **societyoflaterlifeadvisers.co.uk**) or Unbiased (**0800 023 6868**, **unbiased.co.uk**) to find an independent financial adviser.

Be wary of any advice which suggests that you can transfer assets to avoid or reduce care fees.

10. Summary checklist

When the council carries out a financial assessment to see what they should pay towards your social care services, they'll consider whether you purposefully deprived yourself of money or other assets to avoid paying for your care.

If you're thinking about gifting an asset, there are some steps you should take to get advice and make sure it won't be seen as deprivation of assets.

- Consider the benefits of keeping your assets (see chapter 9) – don't assume you're better off giving money or possessions away if you're going to need expensive social care. ☐
- Get legal or financial advice from a specialist adviser before gifting an asset to someone. You can find an independent financial adviser through the Society of Later Life Advisers (**0333 2020 454**, **societyoflaterlifeadvisers.co.uk**) or Unbiased (**0800 023 6868**, **unbiased.co.uk**). ☐
- Be aware that any assets mentioned in your will are still likely to be considered as part of the council's financial assessment. ☐
- Check with the council before gifting an asset, to make sure it won't be seen as deprivation of assets. Get this in writing so you can use it as evidence if an issue comes up later. ☐
- If you no longer have an asset, make sure you have evidence to prove this at your financial assessment (see chapter 4). ☐
- If the council decides you've deprived yourself of assets, you can challenge their decision (see chapter 7). ☐
- Call our free Helpline on **0800 319 6789** if you have any questions about paying for your care. ☐

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The sources used to create this publication are available on request. Contact us using the details below.

Thank you

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