Private Client

Care home fees: a guide

There is a lot of confusion surrounding care home fees. This guide aims to provide clear and concise information on the subject, and so inevitably many points have been covered only in brief or not at all. Please contact us for specific advice on your personal circumstances.

What is the problem?

Today, men aged 65 have a 7 in 10 chance of needing some care before they die and women aged 65 have nearly a 9 in 10 chance. The situation is likely to get worse. People are living longer, but not necessarily healthier lives, and living with conditions such as arthritis, the effects of a stroke or dementia.

On average, a 65 year old can expect to need 'care' costing £30,000 during retirement, although 5% will need care that costs more than £100,000.

'Care' does not include accommodation costs and so these Government figures can effectively be doubled. For a couple, these figures can potentially be doubled again if they both require care.

Will there be a change in the law to solve this problem?

No Government could afford to pay for all care and accommodation costs for all care home residents. Please refer to the 'Frequently Asked Questions' section of this guide for further information on upcoming changes in the law.

Might the care in a home be completely free?

There is a *possibility* that care will be free:

Section 117 aftercare: if a person is detained for treatment under Section 3 of the Mental Health Act 1983 (commonly referred to as being 'sectioned'), social services and the health authority will be required to make aftercare arrangements for that person under Section 117 of that Act. This 'Section 117 Aftercare' will be free until it is no longer needed. Whilst there is a possibility of free aftercare being withdrawn, many cases involve dementia and so an improvement in this condition is unlikely. If free aftercare is withdrawn, we can provide you with advice and assistance on challenging such a decision.

NHS Continuing Care Funding: if a person has needs which are primarily nursing needs, then it is possible for all care and accommodation costs to be paid by the NHS. This is known as 'NHS Continuing Care Funding'. It is a complex area and so we can give advice and assistance on arranging for the appropriate assessment to be carried out, and challenging assessments which incorrectly refuse the funding.

For the vast majority of people, however, care in a home will not be free and so in those circumstances the following limited financial assistance is available:

- NHS-funded nursing care (previously called 'RNCC', the Registered Nursing Care Contribution): this is a flat rate contribution to nursing costs of about £150 or £210 (standard and higher rates) per week. Confusingly, this payment has nothing to do with NHS Continuing Care Funding mentioned above. The contribution does not meet the full cost of the care, but simply pays a fixed weekly amount towards the costs of assessed nursing care needs
- Attendance Allowance: this is a tax-free benefit for people aged 65 or over, who need help with personal care because they are physically or mentally disabled. For those under the age of 65, Disability Living Allowance or the Personal Independence Payment may be available instead

What is the financial assessment process?

For those who do not qualify for free funding, a financial assessment will take place to determine what contribution should be made towards care home fees.

The Local Authority can only take into account the income and capital of the person in the care home and so cannot take into account any income or assets in the sole name of a spouse or partner. That said, the Local Authority is entitled to take into account a share of any jointly held assets. This will be deemed to be an equal share of any joint asset (such as a bank account) unless an alternative division can be proved to exist.

For the person in the care home, the first call on funds is from income. All income is taken towards care home fees, less some limited exceptions such as the Personal Expenses Allowance (PEA) of approximately £20 per week and one half of an occupational pension, if it is paid to a spouse. If the income of the person in the care home is not sufficient to meet the care home fees, then the Local Authority will consider that person's capital.

The Local Authority must contribute to care home fees if the person's capital is below the annually set threshold. Above it, the resident must pay the full fees. At present, the following figures apply:

- Assessable assets in excess of £23,250 (the upper capital threshold): the person in the care home will be fully responsible for the care home fees
- Assessable assets between £14,250 and £23,250: the Local Authority and the person in the care home will share responsibility for the care home fees
- Assessable assets below £14,250 (the lower capital threshold): the Local Authority will pay their maximum contribution towards the care home fees. The Local Authority do not simply "pick up the bill". This means that they will still take the income of the person in the care home and there may still be a shortfall. In such circumstances, please refer to the section below on *Top-ups*

Disregarded assets

The phrase "assessable assets" has been used because certain assets are permanently disregarded, such as:

- Personal chattels, for example a car, caravan, mobile home, jewellery or boat
- Life policies which include investments with an element of life cover, such as Investment Bonds or With-Profit Bonds. More information is available upon request
- A Personal Injury award for the first 52 weeks after the initial payment; or indefinitely if held in trust

Your main residence will be disregarded if:

- You are a temporary resident in a care home
- You are in the first 12 weeks of a permanent stay in a care home
- A spouse/partner is living in the property
- A family member over the age of 60 is living in the property
- A family member under the age of 16 is living in the property
- A family member, who is incapacitated, is living in the property. Note that 'incapacitated' has no strict legal definition in this context and at Buckles we can give detailed advice on this if needed

Your main residence might be disregarded if:

- A family member aged between 16 and 60 is living in the property. In this situation the Local Authority has discretion to ignore the value of the property. This is unlikely to be mentioned and less likely to be exercised. If you or a family member is in this situation, we can provide advice based on your specific circumstances

Frequently asked questions

"Mum is in a care home – do we now need to arrange for her to sell her house?"

No. Once the 12 week disregard of the property ends, it is possible to do any of the following:

- Rent out the property: this will maximise income, but the full value of the property will still be taken into account in the financial assessment
- Sell the property: this will convert the property into cash, providing the funds to either meet the care home fees or invest appropriately (for example, to provide an income) or purchase an Immediate Care Fees Plan. The advice of an Independent Financial Adviser (IFA) should be sought. We can recommend an IFA to you if requested
- Seek a Deferred Payment Agreement with the Local Authority: the care home fees will be paid by the Local Authority, but with those fees building up as a debt on the property. The Local Authority cannot dictate when the property is to be sold. Interest will accrue on the debt until it is repaid

"Should I sign a Deferred Payment Agreement?"

Instead of selling a property, it is possible to enter into a Deferred Payment Agreement with the Local Authority. This is essentially a loan secured on the property as a charge/mortgage.

Whilst the Deferred Payment Agreement is in effect, you will still have to pay all the usual household expenses, except for council tax given that if a property is left due to someone moving into a hospital or care home then it will be exempt. Bear in mind that house insurance for an empty property will be both limited and subject to certain conditions (such as maintaining a certain temperature or draining the water system and regular inspection).

A Deferred Payment Agreement may be the best option if:

- You believe that property prices are likely to increase during your period of stay in a care home at a rate which is greater than the interest being charged
- You have a family member living in the property who, whilst not currently aged 60, is likely to reach that age soon, at which point the property will be disregarded in the financial assessment

- You have personal reasons for wishing to retain the property

Whilst you do not need to place your property on the market to benefit from the Deferred Payment Agreement, if you do so then you may be able to claim Pension Credit and Attendance Allowance.

"The care home costs more than the Local Authority are willing to pay – how do I pay for the rest? What is a Top-up?"

For those with assessable assets above the upper capital threshold, the full care home fees will be payable.

For those who qualify for Local Authority assistance with care home fees, the Local Authority will set a maximum amount that they are willing to pay each week towards those fees. Any additional amount payable, as a result of the resident or family member actively choosing more expensive accommodation, will need to be paid through a Top-up. The care home resident or his or her spouse or a third party (such as a family member) can enter into the top-up arrangement.

A Top-up is not appropriate – and so the actual care home fees must be paid by the Local Authority – in two situations:

- If the care needs of the person in the care home can only be met in accommodation that is more expensive than that which the Local Authority is willing to fund; or
- There is simply no other choice (that is, there are no rooms available elsewhere) which means that there has been no "active selection" of the more expensive accommodation

When picking a care home, keep evidence of letters and telephone conversations with care home staff in order to prove (if needed) that you were forced into selecting the more expensive accommodation.

"What happens if my money runs out?"

As your assessable assets approach the upper capital threshold, you should seek Local Authority assistance with funding. The financial assessment process can take some time to be concluded, and so it is wise to request assistance in good time. If, at the point of requesting financial assistance, the care home fees are higher than the Local Authority is willing to pay, then you can:

- Move to a cheaper care home which is within the Local Authority benchmark for fees
- Arrange to pay a Top-up
- Argue that the care needs of the person in the care home dictate that they should remain where they are, which in turn means there has been no "active selection" of a more expensive accommodation and a Top-up is not appropriate. This may result in the Local Authority paying the full fee. We can give advice and assistance in this situation

"My daughter lives in a different part of the country – can I move to a care home closer to her?"

There are special rules in place for those moving to a new Local Authority. Generally speaking, the liable Local Authority will be the Local Authority which is first asked for financial assistance (as opposed to mere provision of information). So, if the move to a new Local Authority occurs whilst Local Authority funding is in place, then the first Local Authority continues to be responsible for the funding.

Be aware, however, that a Top-up (see above) may be required if the cost of the new care home is more than the Local Authority would ordinarily expect to pay.

If the care home resident is privately paying and then moves to a new Local Authority before requesting financial assistance with funding, then the second Local Authority is responsible for that funding.

"How much money can I give away each year? Is the limit £3,000? Will the value of the gift be ignored after 7 years?"

During the financial assessment, the Local Authority will look to ensure that you have not given away any assets in order to avoid incurring care home fees.

The annual exempt amount of £3,000 and the "7 year rule" both relate to the subject of Inheritance Tax and how gifts are treated on death by HM Revenue & Customs. The Local Authority's rules regarding "deprivation of capital" are very clear. Gifts of any amount, made at any time can be set aside or ignored if a significant reason for the gift was to reduce the amount available to be spent on care home fees. If there is a good reason for a gift, clearly evidenced, then the Local Authority should not take into account.

If large gifts are contemplated, then we can give advice on the best way to proceed. If gifts have already been made and the Local Authority is attempting to take these into account, then we can give advice and assistance in this situation also.

In order to reduce your cash assets without falling foul of the rules in relation to gifts/deprivation of capital, it is possible to spend money on yourself. One method of spending money without it being wasteful is to purchase a Funeral Plan or a Pre-Paid Probate Plan.

To arrange a Funeral Plan (that is, pre-payment of the cost of a funeral) you can contact:

- Golden Leaves
  www.goldenleaves.com
  Telephone: 0800 85 44 48

To arrange a Pre-Paid Probate Plan (that is, pre-payment of the cost of administering an estate of someone who has died) please contact us for further details.

“Will there be a change in the law to pay for the care home fees?”

As stated above, no Government could afford to pay for all care and accommodation costs for all care home residents.

Whilst successive Governments have repeatedly come up with plans to change the law to give greater financial assistance to all for “care” costs, it is also true that each newly-elected Government has discarded the plans of the previous Government in favour of commissioning a new report to come up with new proposals. Such new proposals are then coupled with a lead in period of a number of years, rather than being implemented immediately, which therefore gives the next Government the opportunity to cancel such proposals in favour of commissioning a new report to come up with new proposals!

The most recent example of changes to the law being proposed, then delayed, then ultimately cancelled is with the Care Act 2014. This Act of Parliament came into effect in April 2015, with a proposed “care cap” of £72,000 to be introduced in April 2016, but in late 2015 this was delayed until April 2020. Then in October 2017, the Conservatives dropped the plans to introduce the cap in April 2020. It is now unclear what the future holds for the law on care home fees.

It is therefore clear from the above that careful planning to protect assets from the potential liability of care home fees remains appropriate.

“How can I protect my assets from care home fees?”

Please refer to our separate information sheets on protecting assets from the potential liability of care home fees.

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