

Care home fees and treatment of property

About this factsheet and who it is for

Almost 40% of older people in care homes pay for their own care and many do so from the proceeds of their former home.

This factsheet aims to give you a comprehensive understanding of when and how a property may be taken into account when a permanent stay in a care home is needed.

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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Disregarded property

If a care home stay is expected to be temporary then the value of any property owned by the resident is ignored.

However if a stay becomes permanent then the value of the property must be considered.

In some situations, the value of a property may be ignored by the local authority. The disregards generally apply where the home is occupied by one of the following:

- The care home resident's partner (who is not estranged or divorced from them).
- A relative of the resident who is aged over 60, or is incapacitated.
- A child under the age of 16 years who the resident is liable to maintain.
- A lone parent who is the resident's estranged or divorced partner.

The local authority also has the discretion to ignore property in special circumstances; for example if it is the sole residence of the care home resident's previous carer who gave up their own home and/or employment in order to care for them.

If the spouse, relative or carer decides to leave the property then the disregard will cease from this date and the property will

be taken into account for care costs. Also, only one dwelling can benefit from any of the above property disregards.

If none of the above disregards apply then property will likely be treated as capital in the means test for care.

However, if the individual's other capital is below the higher means test threshold of £23,250, and their income is insufficient to meet the care home's fees, then the value of the property may be disregarded for up to twelve weeks from the date of permanently entering the care home.

It is important to note that the above disregards only apply to care funding; the Department for Work and Pensions (DWP) does not exercise this discretion over disregarded property for the purposes of means-tested benefits, such as Pension Credit.

Twelve week property disregard

This is effective for all people who enter care homes permanently and meet the qualifying criteria. The local authority will disregard the value of property and treat the individual as if they were state funded for twelve weeks or until the property sells, if sooner. This means that during this period the individual will only have to contribute their assessed income, less an amount retained for personal expenses

(£24.90), towards what the local authority pays as a standard rate. To be eligible for this disregard you must:

- Be assessed as needing permanent residential accommodation which can be accommodation provided by either a local authority or an independent care home.
- At the point of needing permanent residential care, your capital (outside the value of the property) is less than the upper capital limit of £23,250 and your income is not sufficient to meet the full cost of your care.

The twelve weeks property disregard is mandatory and local authorities should apply it once they are aware of a person to whom it applies. Delays by local authorities in providing this funding does not affect a resident's entitlement to it and could render the local authority liable to reimburse anyone who consequently paid a higher contribution towards their care costs than they otherwise should have during this period.

Deferred payments agreements

Individuals who have not been able to, or do not wish to, sell their homes to pay for their care may enter into a deferred payments agreement with the local authority whereby the authority

continues to provide their funding towards the care home fees.

Changes from April 2015

From April 2015 (as part of the Care Act 2014) local authorities must offer a deferred payment arrangement to those that are eligible and have discretion to offer them to those that do not meet the criteria in full.

Local authorities can also charge interest on the loan and include any reasonable costs. Where local authorities do decide to charge interest this must not exceed the maximum specified in regulations. The maximum interest rate will be set every six months in January and June and is currently 1.35%.

It is likely that a person will have to contribute towards the cost of their care from any income they have and the deferred payment arrangement would meet the shortfall. The local authority must give the resident the option to retain up to £144 per week of their income if they choose to.

Who is eligible?

Deferred payment agreements are open to those whose other assets are less than £23,250 and their income is not sufficient to cover the cost of the care that they

have been assessed as needing by the local authority (social services).

Local authorities must operate this scheme and offer it to those who meet the criteria, although if you do not meet this criterion you can request that the local authority use their discretion to offer a deferred payment agreement.

Advantages and disadvantages

There are possible advantages to entering into a deferred payments agreement. The individual will benefit from any growth in the value of the property. It may be possible to let the property and contribute the rent towards the fees and, the decision to sell the property can be deferred whilst all options are being considered. If the stay in the care home turns out to be for just a short period then the amount of debt accrued may be small enough for the resident or family to pay off and there might be no need to sell the property.

However, there are also possible disadvantages to not selling the property and participating in a deferred payments agreement.

The loan is only deferring a liability repayable from the eventual proceeds of the property and the local authority will charge interest on the loan, although

authorities have been told that it should only be sufficient to meet the administrative and legal costs that they incur in setting up and monitoring the agreement.

The current interest rate is 1.35%

Things to consider

Before entering into a deferred payments agreement, you might wish to bear in mind that:

- The property will require maintaining and insuring.
- Letting property can often be troublesome and rental income is taxable.
- The level of local authority funding may restrict the choice of accommodation unless a top-up is affordable over the long-term.
- Councils may ask residents to cover up front the costs of land registry searches and any other such legal costs.

The uptake of deferred payments agreements has generally been low and many people prefer to simply sell the property and consider alternative financial options for meeting care costs, such as immediate need care fee payment plans. It is essential to seek professional advice when considering these options.

Benefits and deferred payments

Whilst participating in a deferred payments agreement, entitlement to Attendance Allowance continues.

If the property has been put up for sale then you may also be able to continue claiming means-tested benefits such as Pension Credit, subject to your other capital. This is because a property is disregarded for benefit purposes if steps are being taken to sell it, although this disregard will be reviewed after 26 weeks.

If steps are not being taken to sell the property then it is likely the DWP will consider its value and this may reduce or cease your entitlement to Pension Credit.

Top-ups for more expensive accommodation

Local authorities would normally only pay their standard rate for accommodation, which in many cases is less than care homes normally charge. In these circumstances people receiving the twelve weeks property disregard funding will be entitled to top-up the local authority contribution from disregarded income, earnings or capital with the proviso that:

- The resident is able to demonstrate that they are able to afford the top-up for the duration of the twelve weeks.

- The level of tariff income assessed (£1 for each £250 of capital between the lower and higher means test capital limits) remains the same even though the capital may reduce as a result of topping-up during the twelve weeks period.

Similarly, whilst participating in a deferred payments agreement it is possible to top-up fees from disregarded income, earnings or capital including the value of the property that is subject to the deferred payments agreement with the proviso that the resident must be left with total capital resources of no less than £14,250.

Where the top-up forms part of the deferred payments agreement it is eventually repaid when the property is sold. Local authorities may be reluctant to enter into such agreements if they are not satisfied that the person has sufficient resources or equity in their property to meet their contribution including the top-up, for the duration of their stay in the care home.

People are only permitted to provide their own top-ups whilst benefiting from the twelve weeks property disregard or participating in a deferred payments agreement. In any other circumstances where the local authority is providing funding towards the care home fees any

top-up may only be paid by a third party who the local authority considers is able to cover the cost for the duration of the third party agreement. It may not be paid by the person being funded by the local authority.

Income from property

Where someone owns a property and decides to let it to tenants, because the property will be treated as a capital asset, the rental income is ignored in calculating their assessed income for the purpose of means-tested benefits.

If participating in a deferred payments scheme the individual can agree to pay their rental income, along with their other income, to the local authority in order to reduce the accruing debt.

Deprivation of assets

Some people consider the possibility of transferring ownership of their property to someone else, often a family member, so it is not taken into account in the financial assessment. The council will normally ask if a property has ever been owned and can look at any such transfers. There is no time limit as to how far back they can go in considering the circumstances surrounding a disposal. If they consider that the person disposed of an asset in order to avoid using the value

of it to pay for care they may consider it to be deprivation of assets. They have to consider both the timing of the transfer and the intention behind it. If they consider deprivation has taken place they can assess the person as if they were still in possession of the property.

More information on Deprivation of Assets can be found in our factsheet on this subject.

NHS Nursing Care Contribution

People living in nursing homes participating in the deferred payments agreement will, subject to assessment, be entitled to a contribution towards their nursing care from the NHS as if they were normally self-funding their care.

More information on NHS funding in care homes can be found in our factsheet on this subject.

Council Tax

Properties that have been left empty by someone who has moved to receive care in a care home are exempt from Council Tax. If the property is disregarded because a spouse is still living in the property, they may be entitled to a 25% discount or a reduction through means-tested benefits.

Jointly owned property

Where a property is jointly owned with another person whose joint ownership does not enable the property to qualify for any of the above disregards, the local authority will take the care home resident's share into account. However, in doing so it is the value of that interest which is taken into account bearing in mind:

- the person's ability to re-assign the beneficial interest to somebody else.
- there being a market i.e. the interest being such as to attract a willing buyer for the interest.

It may well be construed that because a joint owner has a right to occupy the property it is unlikely that there would be a willing buyer prepared to share in that right to occupy it. Therefore, if the only person interested in purchasing the care home resident's share is the other joint owner, then the 'market value' of the resident's share could be very low and may not be taken into account by the local authority.

Annex B, Section 15 of the Care & Support Guidance, March 2016, states: "A capital asset may have a current market value, for example stocks or shares, or a surrender value, for example premium bonds. The current market value will be

the price a willing buyer would pay to a willing seller. The way the market value is obtained will depend on the type of asset held."

Section 18 of the guidance states that: "Where the value of a property is disputed, the aim should be to resolve this as quickly as possible. Local authorities should try to obtain an independent valuation of the person's beneficial share of the property within the 12-week disregard period where a person is in a care home. This will enable local authorities to work out what charges a person should pay and enable the person, or their representative, to consider whether to seek a deferred payment agreement."

Beneficial and Legal Ownership

The name(s) on the deeds of the property would in normal circumstances establish the property's ownership. However, if ownership is disputed and the person's interest is alleged to be less or more than seems apparent from initial information, the local authority will require written evidence on any beneficial interest the resident, or other parties possess.

Placing a Charge on Property

Where a person has a beneficial interest in land that is not disregarded and fails

to pay an assessed charge for their accommodation or chooses to participate in a deferred payment agreement, the local authority can place a charge on the property to pursue the debt and recover the cost of the accommodation paid on their behalf. In arriving at the value of the property to be treated as capital the local authority will allow ten percent of its value as notional selling costs. The balance of the value will be treated as notional capital and the charge against the property will continue to accrue until such time that the notional capital, after deducting the charge for accommodation, is deemed to be below £23,250, thus signalling the point at which the authority can begin to provide financial support.

Where the land is jointly owned the resident's interest is technically in the proceeds of sale of that land and not an interest in the land itself. In this case section 22 (8) of the Health and Social Security Adjudication Act 1983 has the effect of preventing the registration of an interest in the proceeds of sale of land. The authority may therefore only register a less effective caution.

Park Homes

Although the value of a park home is taken into account in the financial assessment the owner of such property does not qualify for a deferred payments

agreement because park homes are not registered with the Land Registry therefore a charge cannot be placed on them in the same way.

Couples

For the purpose of the financial assessment, when one member of a couple enters residential accommodation, the value of his/her home is disregarded as long as it continues to be occupied in whole or part by his/her partner. Should the partner remaining at home decide to sell the property and move into smaller less expensive accommodation, the care home resident's 50% share of the proceeds could be taken into account in the charging assessment. However, should they wish to make available part of their share of the proceeds to their partner at home to enable them to purchase an alternative property, the local authority guidance states that it would be reasonable for such an amount to be disregarded, leaving only the surplus of their share not so used to be counted in the means test.

Couples should consider whether jointly owned property should be held as a joint tenancy or as tenants in common. The advantage of the latter would enable a partner to leave their share of the property to an alternative beneficiary rather than it automatically falling to

their joint owner and being fully counted in a means test for care. The change in status of ownership can be effected by either party without consultation.

Read our factsheet on 'Care home fees and the treatment of couples' for more information.

Long-term affordability

Every case must be considered on its own merits taking into account life expectancy, the property market, the possible loss of state benefits, the feasibility of letting against selling and investing in alternative financial products and the family's wishes to remain independent from State provision.

If there is a chance of not being able to fund a chosen care home over the long-term it's important to address the issue right at the outset with the care home and the local authority. An assessment of care needs should be arranged with the local social services department to ensure the care home being chosen matches the person's assessed needs. If the chosen care home costs more than the local authority usually pays, might it reduce its fees to the local authority rate in order that you can remain there or would a top-up have to be found? The only alternative might be to move to less expensive accommodation, assuming that the

resident's needs are able to be met in the lower cost care home

A move could also be required if, for example, the home originally chosen can't provide the level of care the person has been assessed as needing.

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.

Note: The figures given below are based on those proposed for the postponed 2016 reforms; these figures may therefore change before the introduction of these reforms in 2020.

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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