# meeting the cost of care

The cost of care is something that is in the forefront of many people's minds. It is however a topic that can cause some confusion with regard to the level of funding available from the Local Authority. There can also be conflicting advice with regard to the position of assets that are given away prior to going into care whether the Local Authority can challenge such gifts.

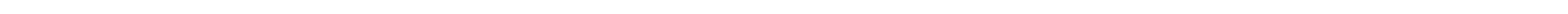
The basic position with regard to care fees is that the Local Authority will fully fund anyone in care provided their capital is less than £13,000. Any income that the person in care is receiving from pensions and the like will have to be paid towards the cost of the care. No contribution from the capital will be required. The Local Authority will pay this. If the person in care has capital between £13,000 and £21,500 the Local Authority are obliged to make some contribution towards the fees.

Where capital of over £21,500 is held then the person would be regarded as self-funding and would have to pay the full cost of their care.

One important point to note is that where the Local Authority are paying the cost of care the care received can be very basic and the choice of home extremely limited. Many elderly people will wish to obtain a better standard of care and accommodation than the Local Authority are prepared to provide. The Local Authority may only provide for a shared room, a less attractive room or a less comfortable nursing home. It is an important point to bear in mind when considering transferring assets with a view to receiving assistance from the Local Authority.

If a person is adjudged to be self-funding because of the amount of capital they hold, they are entitled to claim free nursing care with effect from October 2001. Their care needs are assessed and fall within three bands, low, medium or high. The lowest band attracts a payment of £40 per week, medium band £87 a week and the highest rate paid is £139 per week. This money is paid by the Local Health Authority directly to the nursing home. It is only available to people who are in a nursing home as opposed to a residential care home. It is also only available whilst the person is fully contributing towards the cost of their fees from their own resources.

One point of confusion sometimes arises with regard to jointly owned assets. Where assets are held jointly the Local Authority will simply split these down the middle. Any savings will be deemed to be held 50-50 irrespective of who has actually contributed the funds over the years. Any accounts that are held in a persons sole name are counted as being that person's money and will be taken into account when assessing how much they have to pay for care fees. This can be an important point where assets have been transferred to the non-tax paying spouse, or partner, in order to maximise tax relief. Should that person need care then those funds in their sole name would be counted as their own for financial assessment purposes by the Local Authority. With regard to an Occupational Pension being paid to the person who goes into care this is also split equally. The person in care would receive one half of the Occupational Pension whilst the spouse remaining at home would have the benefit of the other half.



Given that care fees are somewhere in the region of £400 to £850 a week it can be tempting to look at transferring assets to a third party in the hope that the Local Authority will not then be able to count these into the financial assessment. There are various schemes which are promoted but it has to be said that none of these come with any guarantee of success nor are they approved by the Local Authority and indeed may well be challenged by the Local Authority.

If an outright gift is made to a person's children for example it must be remembered that this carries a significant risk. Aside from the possibility of a family argument developing there is also the danger that if assets have been transferred to a child they are then at risk if that child has financial difficulties, and becomes insolvent, or if matrimonial problems arise. In such circumstances the assets transferred to the child are deemed to form part of that child's own assets and are at risk from the Trustee in Bankruptcy or orders under matrimonial legislation.

There is also the possibility (however remote) of the child to whom the assets have been transferred dying before the person who transferred the assets. This can lead to the assets passing on to a third party with whom the person in care or anticipating care may not have a happy relationship.

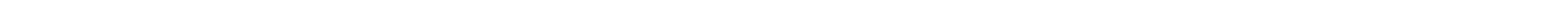
It is better to attempt to shelter the assets within a Trust. This gives some flexibility and also protects the person giving the assets away from the foregoing problems. The chosen assets are transferred into what is called a Discretionary Trust. This means that the assets are then dealt with by the Trustees who are appointed to operate the Trust. The Trustees have absolute discretion as to who, from a list of approved beneficiaries, may benefit. The person transferring the property into the Trust can be a beneficiary and can also act as a Trustee. The fact that the asset has been transferred into the Trust means that it is owned by the Trustees and not by the individual making the transfer. It has the effect of hopefully putting the asset beyond the Local Authority's reach whilst not compromising the ability of the person making the transfer to continue to enjoy the asset.

It should be noted that such a transfer should not be effected for inheritance tax purposes.

It should also be noted that any transfer of assets to a third party (including a Trust) if made within six months of the person needing care will be overturned by the Local Authority. This is their statutory right. Once the six-month period has elapsed the Local Authority have no automatic right to overturn the transfer but they can challenge this. They need to show that the principal reason why the transfer was effected was to attempt to put the asset beyond their reach. In truth this is not a difficult principal to establish as there is no good reason for a transfer of assets to third parties unless it can be shown to effect a tax saving. As previously stated a transfer into a Trust, and indeed a straight gift of a house to a third party, if the person continues to live in the property, does not effect a saving for inheritance tax.

The Local Authorities have always been able to use the Insolvency Act. This applies to make the person who has transferred the asset, bankrupt. The reason for this is the Local Authorities argue that the person making the transfer did so to avoid it being used to pay the person's debts. The debts in question are of course the residential care fees which would have been paid had the person retained the asset.

Until very recently no Local Authority had taken proceedings. This has now changed and Suffolk County Council are currently involved in taking proceedings under the Insolvency Act against a 91 year old lady who transferred her property to her son as an outright gift. Should this case succeed then you can be sure that every Local Authority in the country will start to use the Insolvency Act. The upshot of this is that any transfer would need to be made five years prior to care being needed.



The Insolvency Act operates to appoint a Trustee in Bankruptcy. The Trustee has the power then to look back at all transfers made and to reclaim these on behalf of the creditor, which in this case would be the Local Authority. Although there is no time limit for looking back it would be very difficult for the Local Authority to set aside a transaction which occurred over five years before the claim for benefit was made.

It will be noted therefore that forward planning is essential when dealing with the question of nursing home fees. It should also be remembered that care insurance is available and this can provide an income and can safeguard assets subject to the payment of either a one off or monthly premiums.

Before deciding that the transfer of assets is the course of action to take a person should also work out what their income would be should they need care. They should work out their pension income and the income from any assets which would be sold and invested. If that income is very close to, or exceeds, the cost of care then clearly there is no reason for any transfer of assets to be made. If there is only a small shortfall it may well be appropriate to look at care insurance to cover that gap.

At the end of the day once it has been accepted that at some stage in the future payment of care fees is likely then planning should begin. The earlier this planning begins the greater chance of success any scheme has. In each case the person involved must make his or her own decision as to what will give that person peace of mind for the future. There is no point in entering into a complex scheme or transferring assets if by that action it provokes worry and anxiety. The moral is to seek advice from expert sources as soon as possible before this becomes a practical problem.

## get in touch

To find out more about what we can do for you please contact:

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