Care Home Funding and the Treatment of Property

According to the Liberal Democrats, around 70,000 homes are sold each year to pay for the care of older people in care homes. The treatment of property in the means test for care can be quite complex. This factsheet explains when and how property is counted or disregarded in the means test for care and the effect it might have on benefits and local authority care funding.

Some Property is Disregarded

If you are staying in a care home for just a temporary period for example for respite care or rehabilitation then the value of the property if you are intending to return to it is ignored. The definition of temporary allows the local authority to regard a person's stay as temporary if it is likely to last for any period not exceeding 52 weeks, or, in exceptional circumstances, is unlikely to substantially exceed 52 weeks..

If on the other hand you decide to live in a care home permanently then the value of the property is considered. However, its value will be ignored where it is occupied by any 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 a person who was your previous carer and who gave up their home in order to care for you. This disregard would cease and the property will be taken into account if the carer were to die or move out.

If none of the above disregards apply your property will normally be treated as capital in the means test for care. However, if your other capital or savings is below the higher means test threshold, currently £23,250 and your income is insufficient to meet the care home’s fees then the value of the property should be disregarded for twelve weeks from the date of you becoming a permanent care home resident and the local authority should assist with the fees during this period. This is called the ‘Twelve Weeks Property Disregard’ which is explained in greater detail below. Only one dwelling can benefit from any of the above property disregards.

Twelve Weeks Property Disregard

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This is effective if you enter a care home **permanently** and meet the qualifying criteria**.** The local authority will disregard the value of your property and treat you as if you were state funded for twelve weeks or until the property sells, if sooner. This means that during this period you will only have to contribute your assessed income towards what the local authority pays as a standard rate for care home fees. In assessing your income you will be allowed to retain £22.30 for personal expenses. To be eligible for this funding you must:

- Be assessed as needing **permanent** residential accommodation which can be accommodation provided by either a local authority or an independent care home.
- Have other capital apart from the value of the property of less than £23,250 and your income must be inadequate to meet the full cost of your care.

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

Beyond the Twelve Weeks Disregard Period – Deferred Payments Agreements

If you have not been able to or do not wish to sell your home to pay for your care you may be able to enter into a deferred payments agreement with the local authority whereby the authority continues to provide their funding towards the care home fees after the twelve weeks but it is treated as an interest free loan and is secured against the value of the property.

This facility is open to those whose other assets are less than the upper capital limits and their income is not sufficient to cover their fees. Local authorities have discretion over whether to operate this scheme. For example, they may not wish to enter into an agreement if the cost of the care you have chosen may not be affordable over the long-term.

There are possible advantages to entering into a deferred payments agreement: you could 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 while you consider all your options.

If the stay in the care home turns out to be for just a short period the amount of debt accrued may be small enough for the family to discharge and there might be no need to sell the property if it is preferred to keep it. 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; the local authority will charge interest on the loan 56 days after the person dies, there is no set interest rate and some councils charge quite a high rate; 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 your choice of accommodation unless a top-up is affordable over the long-term; councils may ask you to cover up front the costs of land registry searches and any other such legal costs they might incur; whilst participating in a deferred payments agreement entitlement to Attendance Allowance continues. As regards to Pension Credit with severe disability addition, this also continues and is reviewed after 26 weeks if the property is on the market. However, if the property is not being sold and not on the market it may be treated as capital by the DWP and, subject to its value, entitlement to Pension Credit could cease.

Not everyone is offered deferred payments agreements consequently, the uptake has been low or many people prefer to simply sell their property and consider alternative financial options for meeting care costs, such as immediate need care fee payment plans.

Top-ups for More Expensive Accommodation

Local authorities would normally only pay their standard rate for a care home place and often this considerably less than care homes normally charge. In these circumstances if you are receiving the twelve weeks property disregard funding you will be entitled to top-up the local authority contribution from disregarded income, earnings or capital with the proviso that:

- The total top-up during the twelve weeks period must not exceed the lower capital limit currently £14,250 which is equivalent to £1,187.50 per week.
- The level of tariff income assessed (£1 for each £250 of capital between £14,250 and £23,250) remains the same even though your capital may be reducing as a result of topping-up during the twelve weeks period.

If you participate in a deferred payments agreement it is also 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 you must be left with total capital resources of no less than the means test lower capital limit.

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 you have sufficient resources or equity in your property to meet the cost of the care for the duration of your stay in the care home.

Income from Property

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If you own a property and decides to let it to tenants, because the property will be treated as a capital asset, the rental income would be ignored in calculating your assessed income. If you were then participating in a deferred payments agreement you can agree to pay the rental income along with your 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, to avoid it being taken into account in the financial assessment for care. However, the council will normally ask you if you have ever owned a property and can look upon any such transfers as possible deprivation of assets. 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 look at both the timing of the transfer and the intention behind it. If deciding deprivation has taken place they can assess the person as if they were still in possession of the property.

NHS Nursing Care Contribution

If you are living in a care home that provides nursing and participating in a deferred payments agreement you will, subject to assessment, be entitled to a contribution towards your nursing care from the NHS as if you were normally self-funding your care.

Council Tax

Properties that have been left empty by someone who has moved permanently into a care home are exempt from Council Tax.

Jointly Owned Property

If you jointly own your property with someone who does not fall into any of the above property disregard categories then the local authority will take your share into account. However, in doing so it is the value of that interest which is taken into account bearing in mind: your ability to re-assign the beneficial interest to another person; there being a market i.e. the interest being such as to attract a willing buyer for your 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. If therefore the only person who may possibly be interested in purchasing the share is the joint owner effectively, the ‘market value’ could be nil. Legal advice should be sought in these circumstances.

Where the local authority is unsure about your share, or their valuation is disputed, a professional valuation should be obtained.

Beneficial and Legal Ownership

The name(s) on the deeds of the property would in normal circumstances be the same as the property's ownership. However, if ownership is disputed and your interest is alleged to be less than seems apparent from initial information, the local authority will require written evidence on any beneficial interest you, or other parties might possess. An example of this could be where children have helped financially with the purchase of their parents' council house.

Placing a Charge on Property

If you have a beneficial interest in land that is not disregarded and fail to pay an assessed charge for your accommodation or choose to participate in a deferred payment agreement, the local authority can place a charge on your property to pursue the debt and recover the cost of their contribution towards your care home fees. In arriving at the value of your property ten percent of its value as notional selling costs should be deducted. The balance of the value will be treated as notional capital and the charge against the property will continue to accrue until such time as that notional capital, after deducting the charge for accommodation, is deemed to be below the upper means test capital threshold being the point at which the authority can begin to provide financial support.

Where the land is jointly owned your interest is technically in the proceeds of sale of that land and not an interest in the land itself. In these circumstances 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.

Interest can only be charged on the sum due to the local authority under a deferred payment agreement from 56 days after you were to die. The local authority rate of interest can be quite high.

Couples

For the purpose of the financial assessment, if you are a member of a couple entering a care home, the value of your home is disregarded as long as it continues to be occupied in whole or part by your partner. Should your partner remaining at home decide to sell the property perhaps to move into smaller less expensive accommodation, your 50% share of the proceeds could be taken into account in the means test. However, should you wish to make available part of your share of the proceeds to your partner at home to enable them to proceed with the purchase of 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 your 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 enables 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.

Choosing Affordable Care

If there is a chance of you being unable to fund your care over the long-term it's important for you to arrange an assessment of your care needs with the local social services department to ensure they will step into help. You should also check if the care home owner will continue to accommodate you at the social services funding rate should you have to rely on this as your only source of funding in the future. If not, how much will your family be required to pay as a third party top-up?

Seek Specialist Advice

Combining advice to maximise the support you are entitled to from the state with appropriate financial advice could go a long way in mitigating care costs. There are especially designed financial products for meeting care costs, for example, **Immediate Need Care Fee Payment Plans** may make it possible to meet care costs for as long as care is needed whilst using up only part of the available capital. equityCare specialist care fees advisers can help or at very least assure families that they have considered the best options to provide their relatives with the financial security they would wish for.

No Obligation Personal Care Funding Reports

equityCare Funding Reports can take the worry out of paying for care and there is no charge to the stage of receiving your personal report. If you decide to invest in any of the financial products recommended in the report equityCare may receive a declared commission from the product provider.

To obtain your personal care funding report from equityCare call the advice line on **0800 014 1640**
Email enquiries@equitycare.co.uk or complete an on line enquiry form at www.equitycare.co.uk