Independent Age

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Patient Information Forum

Factsheet

Can I avoid paying for care by giving away my assets?

If you may need help from the council to pay for your care, you'll usually be given a financial assessment to work out how much you should contribute to the cost of your care. You might be tempted to spend your money or give away property so that it isn't counted in your financial assessment and the amount you have to pay reduces. However, there are strict rules to prevent 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 accessing 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.

The information in this factsheet applies to 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**

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Contents

1. Terms you might encounter

Assets
Items you own that have a financial value.

Capital
Wealth in the form of money or items that have a financial value, such as savings, investments and property (buildings and land).

Income
Money received, especially on a regular basis, such as pensions and benefits.

Means testing
Looking at your finances to work out whether you qualify for financial help from the government or local council. Social care is usually means-tested.

Self-funder
A person who is paying for all of their own care themselves (self-funding), rather than getting financial help from the local council.

2. Paying for care – assessing your contribution

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 established what your care needs are (see our factsheet **First steps in getting help with your care needs**), they will look at your finances to work out what you should contribute to the cost of your care.

The council will look at your assets. Assets are your income and capital (which includes your savings, investments and property). Generally speaking; the higher your income and capital are, the more money you will be expected 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 main or only 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 make a contribution towards your care and support costs.

When the council carries out the financial assessment, if they suspect that you have deliberately tried to avoid charges or reduce the amount you may have to contribute to your care costs, they can investigate to see if there is evidence of 'deprivation of assets' (see chapter 3).

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.

3. What is deprivation of assets?

Deprivation of assets means you have deliberately tried to get rid of your assets to avoid charges or reduce the amount you have to contribute towards your care costs. There are many ways this could happen, 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 then 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 a significant 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 wish to challenge it (see chapter 8).

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.

4. How deprivation of assets affects the financial assessment

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 need to 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 be assessed as having 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, if you've taken money from your pension pot as a cash sum or you haven't bought an annuity, or you've chosen not to draw the maximum income from an annuity, this may be counted as notional income. Contact Pension Wise for more information (0800 138 3944, pensionwise.gov.uk). You may wish to seek specialist financial advice.

What you will have to pay

If you have capital assets 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. You'll be what is known as a self-funder. 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 being assessed. Notional capital also reduces over time.

If you have capital of between £14,250 and £23,250, 'tariff income' is calculated. This is the income that it is assumed your capital gives you. A tariff income of £1 is taken into account as income for every £250 (or part of £250) of capital you have above £14,250 (including notional capital).

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, called the Personal Expenses Allowance.

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 funding support, you should be left with enough income to meet 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 expenditure. 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**.

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 (see above).

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 your assessed contribution. In this case, the council must still make arrangements to provide you with care, as long as, having taken into account your notional income or capital, you're not a self-funder (see page 9).

If you will be a self-funder, 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 your contribution, the council may pursue you (or the person you transferred your asset to) for the money you owe them (see chapter 7). This should be a last resort after all other options have been tried.

5. Deprivation of assets – how the council decides

When the council carries out the financial assessment, they may ask about assets you previously owned as well as those that you currently own.

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 expenditure
- 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 a significant reason for giving away an asset?
- timing – when you disposed of the asset, could you have foreseen that you would need care and support?
- anticipation – did you expect that you would need to contribute towards the cost of meeting your eligible care needs?

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 the need for care and support.

An example

If Ciara purchases some jewellery worth £5,000 the week before she moves into a care home and gifts it to her daughter, this may be seen by the council 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 points to an intentional deprivation, 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 occurred at the time of the financial assessment, but they could make this decision later if, for example, they later discover that you bought a lot of expensive jewellery or art just before your financial 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, can only be given to a family member, friend or acquaintance on a customary occasion (for example, a birthday) or to a charity, and must be reasonable. 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 another person.

6. Examples of deprivation of assets

These examples are just to show how deprivation of assets may work. Each case will be judged individually.

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 it would be reasonable for her to have known that she might need to move into a care home in the near future. The timing of the transfer may have amounted to 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 had 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 (ie notional capital). If so, they then need to decide whether to pursue 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 substantially 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 it would be reasonable for him to have considered that he might require more care in the near future, and the timing may have amounted to 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 (ie 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 (ie 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. In her financial assessment, the council disregards the value of Jane's 50% share in the house while Anne continues to live 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 it would not be reasonable to treat Jane as having deprived herself of capital in order to reduce her care home fees.

Example of how timing is considered

Mr Modi has savings of £22,000 and purchases 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 and there was nothing to indicate that he would shortly need care before this. 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 make a judgement, based on the information available, to decide 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 arises at a later date.

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

If you have deprived yourself of assets and, as a result, are unable to pay your contribution to your care costs, you may end up owing the council money. The council can pursue those debts through the county court, but they should exhaust all other reasonable options first, including:

- negotiation
- mediation
- arbitration.

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. In this case, they can only make an application to the county court if you have turned this option down.

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

Recovering charges from a third party

If you transfer assets to someone else (a third party), this person may be liable to pay the council the amount that you would have had to pay if you still had the asset.

If you transfer an asset to more than one other person, each of them is liable 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 receiving 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 with the sole intention of avoiding 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.

8. 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.

Remember

There is a time limit for using each of these procedures. It's important not to miss it. It may be best to 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. Issues can often be resolved without following a formal route.

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're likely to 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.

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

More information, including about how the time limits work, can be found in our factsheet **Complaints about care and health 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 4 345**, **gov.uk/civil-legal-advice**) to find out whether you would qualify for legal aid.

Whether or not you might qualify for legal aid, the Civil Legal Advice service can give you details of organisations or solicitors specialising in community care law (**0345 345 4 345**, **gov.uk/civil-legal-advice**). You could also visit **find-legal-advice.justice.gov.uk** to find a solicitor.

9. 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 appropriately qualified adviser.

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 subject to the terms of the 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 8).

Inheritance Tax allowance

If you use the Inheritance Tax allowance of £3,000 per 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.

10. Advantages to keeping your assets

There are some advantages to keeping your capital and property, even though 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 meet the eligibility criteria 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's adult social services department first, no matter how much capital you have. If your capital eventually reduces to £23,250, you'll need to be assessed by social services to see if you qualify for their support, before you can get financial help towards the fees.

You don't have to choose a care service within the budget of what the council is prepared to pay for someone with your assessed care needs. However, when looking at possible agencies for care at home or care homes, it's still 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.

Emotional and social benefits

Keeping your capital may also benefit you on a social, psychological and emotional level. 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 than you would if your income was restricted to the Personal Expenses Allowance or the minimum income guarantee (see chapter 4).

Unforeseen consequences of reducing your assets

Even if you have a good reason to transfer some of your assets, other than trying to reduce your care home fees, 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.

Get independent financial planning advice from a reputable adviser 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.

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Thank you

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