A Guide to

Care Home Funding and Home Protection Schemes

leonard gray

Always here for you.

- Understand what types of funding are available if you move into care.
- Understand the basis of local authority assessment of your home for care costs.
- Understand the methods to protect your home for your children's inheritance.

This Guide has been designed to assist you with some of the general issues and to answer questions that you may have. This Guide is only intended to be a general overview of the law in relation to care home funding and home protection schemes. Legal advice should always be obtained from Leonard Gray in application to a particular case.

Section 1

How To Fund Long Term Nursing Care

As people live longer and life expectancy increases more and more elderly people are having to enter into long term nursing care to be looked after when they are no longer able to do so themselves.

Unfortunately, entering into care may not only be a source of upheaval, it can often be costly for those involved. This Section of the Guide looks at the different methods of care home funding.

When a person is required to enter into long term nursing care there are four methods under which that care may be funded. These are as follows:

1. Own Funding

If an individual is able to afford to fund their own place in a care home then they may arrange the placing independently and organise payment methods with that particular care home. However, it is still advisable to seek a 'needs assessment' from Social Services prior to arranging an independent placing, as local authority funding may be necessary in the future once assets and savings start to substantially reduce.

2. NHS Funding

Where a person needs to enter into long term care due primarily to their health care needs, and may for example need to routinely use health care equipment, then that person may have their care place funded by the NHS. To qualify for NHS funding the person must fall within the local Primary Care Trust's eligibility criteria.

If you feel that you or a relative may require NHS funding we would suggest that you consult your local Primary Care Trust for more information. If a person does have their care fully funded by the NHS then the NHS will arrange a place in a suitable care home. The individual will not have to make any contribution to their care, but their social security benefits may be either withdrawn or reduced accordingly.

3. NHS Registered Nursing Care Contributions

If an individual enters into a care home through their own funding or local authority funding (see below), and that care home provides nursing care from a registered NHS nurse, then the NHS will fund the care carried out by that registered nurse. Care carried out in the care home by anyone other than the registered nurse will not be paid for by the NHS. The NHS will often make payments directly to the home in this respect.

4. Local Authority Funding

When a person cannot afford to fully fund their own care then the most common form of funding is for a local authority to pay either partly or fully towards the cost of that person's care.

When a person enters into local authority funded care, the local authority will assess that person for their ability to contribute towards the cost of their care. The assessment may in fact conclude that the person is able to fully fund their own care, at least in the short term until their assets significantly diminish, and will thus conclude that they are not in need of financial assistance from the local authority at that time.

It is this requirement for the individual to contribute towards the cost of their care or fund their own care that often leads to the serious diminishing of a persons assets, and thus ultimately, a family's inheritance. It is also for this reason that many families look to put in place schemes to protect their assets from local authority funding.

The next Section will look at the details of a funding assessment for local authority funded care.

Section 2

Local Authority Funding Assessment

In this Section of the Guide we look at what is taken into account and what is disregarded in a local authority funding assessment.

When a person is required to enter into a care home that they cannot fully fund themselves then the local authority will require that person to be assessed for the purpose of deciding what contribution that person should make towards their care costs. Assessments will be reviewed annually, but a person can ask for a reassessment at any time if their financial circumstances change and they feel a reassessment would be beneficial.

An assessment will look only at the means of the person being assessed and will take into account both:

- Capital including any property, savings, investments, stocks and shares; and
- Income including state benefits, private pension income, trust income.

1. Capital

a) The Capital Cut Off Point

As part of the assessment the Government have set capital cut off points that affect the level of funding, if any, that a person can receive to contribute towards their care. These cut off points are reviewed annually.

For England & Northern Ireland in this current tax year the cut off points are as follows:

- Above £23,250

If an assessed person has capital in excess of £23,250 then that person will be assessed as being able to fully fund their own care. Once a person's capital reduces towards the £23,250 limit then that person should be reassessed.

- Between £23,250 and £14,250

If an assessed person has capital between £23,250 and £14,250 then a contribution must be made from this slice of capital. This contribution is calculated as £1 per week for each £250 slice of capital between £23,250 and £14,250.

(Example: If Mr Smith does not own a property but has savings in the bank of £19,000 then he will be assessed as being able to pay £1 per week towards his care costs for each £250 slice of savings between £14,250 and £19,000. He will therefore be initially assessed as having to pay £19 per week towards his care costs from his savings.)

- Below £14,250

When an assessed person has capital of below £14,250 then this will be ignored for the purposes of an assessment. This first £14,250 of an assessed person's capital will always be ignored, even if they have capital in excess of this figure. This amount is therefore effectively a 'protected' sum of money.

b) When the Family Home is Disregarded as Capital

For a vast majority of people who are assessed their main capital asset to form part of the assessment will be the family home. There is however a number of occasions when the value of family home will automatically be disregarded from an assessment and these are as follows:

- The home will be disregarded from an assessment where it is occupied by:
  - A Spouse; or
  - A relative who is over the age of 60, incapacitated or a child under 16 who is supported by the assessed person.

- There is a discretion for the assessing local authority to disregard occupation by others not listed above.
- If a home is jointly owned then it is possible for the assessed person to argue for it to be disregarded.
- The value of the home is disregarded in relation to the cost of care for the first 12 weeks of the assessed persons permanent stay in care.

2. Income

A person's income will form part of the assessment and will be required to be used towards their care funding, to the extent that where that person's capital falls below £23,250 they will still be required to make a contribution to their care costs from their income.

The only income not taken into account is:

- Income used towards the assessed persons personal expenses allowance whilst in care. The personal expenses allowance enables a person in care to use part of their capital/income to pay for personal goods such as toiletries, gifts and treats.
- Disregarded income. For more information on what income is disregarded advice should be sought from a local authority.

3. Notional Capital

It is possible for 'notional capital' to be taken into account in an assessment. Notional capital can include capital that is paid to a third party on behalf of the assessed person. It can also include capital that an assessed person has deliberately deprived themselves of in order to reduce the level of their capital for the purposes of their assessment.

The biggest capital asset that most people own is their home. As such, often people look to transfer their home out of their name and into the name of a relative, such as a child, therefore greatly reducing the value of their capital assets.

An Example of Notional Capital

Mrs Smith may have to enter into nursing care in the near future. She is the sole owner of her home, which is worth £200,000. She also receives a weekly state retirement pension. She has no savings. She has one daughter and is keen to preserve her home as inheritance for her daughter. She is concerned about the value of her home being taken into account as part of her local authority assessment as this may mean that she is assessed as having to fully fund her own care. Further, she is worried that she may be forced to sell her home to pay for her care.

She therefore transfers her home into the name of her daughter and continues to live in her home. She hopes that if she is required to be assessed by a local authority in the near future, the local authority will not now take into account the value of her home and will carry out the assessment on the basis of her income only, thus meaning that the local authority will either fully or partly fund her care.

Unfortunately, home protection schemes such as this are commonplace. As such, local authorities have been given wide powers to try and counter these schemes. As outlined above, one such power open to a local authority is for them to take account of the value of the home as 'notional capital' when carrying out their assessment. To do this a local authority has to show that:

a) The home has been transferred into the name of a relative or friend,

b) This was done during the period of assessment or within six months before that period, and

c) They can show that this was done knowingly and with the intention of reducing capital for the purpose of the assessment.

Even if the assessed person has transferred the home to someone else more than six months before the assessment, the local authority can still take the value of the home into account if they can establish that a significant purpose of the transfer was to deprive themselves of capital.

Once a local authority has taken into account the 'notional capital' and has completed their assessment they will look for the assessed person to make their contributions towards the cost of their care, either by paying the full fee to the relevant home and collecting that person's share, or by paying its share and requiring the person to pay their share directly to the home or through a third party.

4. Notional Income

Notional income is income that an assessed person may not be receiving at the time of assessment despite their being entitled to it, such as:

- State benefit income available to the assessed person but not applied for; and

- Income due to the assessed but not yet received as at the date of assessment, can be taken into account.

5. Enforcement

If the assessed person fails make the payments then local authority can seek to recover the contributions in one of the following ways:

- If the person has transferred their home to a relative then the local authority may impose liability for the contributions upon the relative to whom the home has been transferred.
- The local authority may look to reverse the transfer through the court system.

- If the assessed person still owns their home then the local authority can look to put a charge on the home, much like a mortgage, which they will then redeem once the home is eventually sold.
- The local authority may seek a court judgement against the assessed person for a failure to meet the assessed costs, and can even look to make the assessed person bankrupt.

It should be noted that each local authority will vary on how vigorously they will pursue their enquiries where they think someone has deliberately tried to deprive themselves of capital. Moreover, it is true to say that a transfer of the home such as the one outlined in the example will make it more difficult for a local authority to take the home into account in any assessment they carry out.

Finally, it should be noted that the longer the amount of time that elapses between the transfer being made and the assessment taking place, the more difficult it will become for a local authority to show that the transfer was a deliberate attempt to reduce capital, and thus the less likely that the local authority will pursue the matter.

The next Section will look at the specific home protection schemes and their advantages and disadvantages.

Section 3

Home Protection Schemes

In this Section of the Guide we look at the three home protection schemes available to those people who wish to try and protect their home from local authority charges when entering into long term care.

It has already been outlined in this Guide that in the majority of cases, the biggest capital asset that a person will own is their home. Unfortunately, when a person enters into long term nursing care the home is often the asset to which a local authority will look to in order to help fund the cost of the care. There are however various methods available to try and protect the home from these charges, and we look at three of the most common below.

Note: Before considering putting into place any of these schemes, the situations upon which the value of the home will be disregarded in a local authority assessment (as outlined above) must always be borne in mind.

Option 1 - Transferring The Home to a Relative

It is possible for a person who is entering into long term care or thinks that they may be entering into long term care in the future to transfer their home out of their name and into the name of a relative, such as a child. By doing this, it is hoped that the local authority will not take the value of the home into account when assessing that person for their ability to contribute to the cost of their care.

The advantages and disadvantages of this scheme are as follows:

1. Advantages

- A lifetime transfer of the home may result in a saving of Inheritance Tax in a very limited set of circumstances.

- There may be a small saving on costs by carrying out a lifetime transfer of the home to a relative rather than the transfer taking place upon death.
- A transfer of the home will make it more difficult for a local authority to take account of the value of the home in any assessment that may be carried out.
- The longer the time that elapses between the transfer taking place and the assessed person entering into long term care, the less likely it is for a local authority to argue that the transfer took place to deliberately avoid care fees.
- If successful, the home may be secured as part of the family inheritance.

2. Disadvantages

- A local authority may still take account of the value of the home as 'notional capital' and seek contributions from the assessed person based on this. The local authority may then look to recover the contributions (see Enforcement above).
- If the relative to whom the home has been transferred divorces then the home may be taken into account in any financial settlement that is agreed upon the divorce. At worse, this could put the property at risk of being sold whilst the transferor is still in occupation. The same risks apply if the relative is made bankrupt or dies.
- If the person never ends up in long term care then the risks of giving away their home may outweigh any potential benefits that could be achieved.
- There may be no Inheritance Tax saving if the person continues to live in the home after they have given it away. Further, if the relative who has received the home dies then the home will be taken into account for Inheritance Tax purposes in their own estate.
- If the relative receiving the home already owns their own home, then they may be charged Capital Gains Tax on the home if they have to sell it at a later date, be it to fund the nursing care or upon the assessed person's death.

Whilst this scheme is perhaps the simplest to put into practice, it is not recommended that it be used. The risks usually outweigh the benefits and the ability for a local authority to regard a transferred home as 'notional capital' means that, ultimately, the scheme may well fail in its objective.

Option 2 - Transferring The Home into a Life Interest Trust

Using this scheme, the occupier of the property would transfer the property into what is termed a 'life interest' trust. The property would then be owned not by the transferor or by a relative, but by the trust itself. There should normally be appointed three trustees to control the trust. One trustee could be the occupier, and the others could be relatives, such as children. The key to this scheme is that the occupier gives themselves a 'life interest' in the property allowing them to live in the property until such time as they enter into long term care. They are often therefore referred to as the 'life tenant' of the trust.

Upon the life tenant entering into care, they are then still entitled to receive income from the property, such as rental income, in order to support their care fees. Alternatively, the trust can be brought to an end upon entering into care, at which point the property will pass onto the ultimate beneficiaries in the trust (often termed the 'remaindermen beneficiaries') who will be the life tenant's children or other relatives. If the trust continues whilst the life tenant is in long term care then the trust will be brought to an end upon their death, when again the property will pass onto the remaindermen beneficiaries.

The advantages and disadvantages of this scheme are as follows:

1. Advantages

- A transfer of the home will make it more difficult for a local authority to take account of the value of the home in any assessment that may be carried out. It is generally felt that the ability of a local authority to take the home into account as ‘notional capital’ is further diminished when it is held in a life interest trust as opposed to being transferred directly to a relative.

- The longer the time that elapses between the transfer into trust taking place and the transferor entering into long term care, the less likely it is for a local authority to argue that the transfer took place to expressly avoid care fees.
- A lifetime transfer of the home may result in a saving of Inheritance Tax in a very limited set of circumstances.
- As the home is not transferred into the name of a relative, unlike the last scheme, the home under this scheme is protected from the risks linked to the divorce, bankruptcy or death of that relative. The occupation of the home by the assessed person is therefore protected because the property is owned directly by the trust and thus cannot be sold as part of a divorce settlement or to meet bankruptcy debts.
- The assessed person is able to benefit from the income that the home may generate to help fund their care fees.
- The scheme has shown itself to be more successful that the previous scheme, thus being more likely to secure a family’s inheritance and achieve its overall objectives.

2. Disadvantages

- It is still possible that a local authority may still take account of the value of the home as ‘notional capital’. However, as stated, this is less likely that in the first scheme outlined.
- There may be no inheritance tax saving if the person continues to live in the home once it has been put into trust.
- The settling up of the trust may be slightly more costly than simply transferring the home into the name of a relative.

This scheme is viewed as a safer option than the first scheme. It generally has a higher success rate in protecting the home from being considered ‘notional capital’, and has the advantage that the home is protected if the remainderman beneficiary divorces, is made bankrupt or dies.

<u>Option 3 - Giving a Spouse or Partner a Life Interest in the Property upon Death</u>

If married couples own their own property then they usually hold the property as 'joint tenants'. This means that rather than each owning a distinct share in the property, they own the property 'as one'. As such, upon the first of their deaths, the property will automatically pass to the surviving spouse, who will then become the outright owner of the property.

As has been mentioned previously in this Guide, if a person enters into long term care whilst their spouse is still alive then their property will be exempt from being taken into account in an assessment by a local authority whilst the spouse continues to live at the property. If the spouse then either dies or themselves enter into long term care then the property may be taken account of by a local authority for assessment purposes unless one of the previously mentioned schemes is enacted.

If, after the first spouse has died, the surviving spouse has to enter into long term care (having now become outright owner of the property upon their spouses death) then the property will again fall to be considered by the local authority in its entirety for assessment purposes.

However, the scheme outlined here, if enacted, can ensure that at least a proportion of the property (usually a 50% share) of the property is entirely excluded from being considered for assessment by a local authority.

Using this scheme, the couple must first ensure that rather than owning their property as joint tenants they own their property as 'tenants in common'. This will mean that they each own a distinct share in the property. The couple will be stated to own 50% each of the property, unless a different percentage is expressly agreed between them.

If a property is owned as joint tenants then a simple deed of severance can suffice to transfer the ownership to tenants in common. By doing this it will ensure that upon the first death outright ownership of the property does not pass to the surviving spouse.

The next step that must then be taken is for the couple to amend their respective Wills, so that upon the first of their deaths, they give the surviving spouse a life interest in their share of the property. The life interest will allow the surviving spouse to benefit from the deceased's spouse share of the property, meaning that the surviving spouse can live in the property until such time as they either enter into long term care themselves or die. If they do enter into long term care then they can still have the right to receive income from their spouse's half share of the property.

The success of this scheme lay in the fact that if the surviving spouse does have to enter into long term care, the deceased spouse's share of the property is entirely protected from local authority assessment, as it is not owned by the surviving spouse but is held in trust for that spouse. The surviving spouse will only be assessed on the basis of the share that they own.

1. Advantages

- If enacted properly the scheme will ensure that if a surviving spouse has to enter into care, the share of the property from which they are benefiting as life tenant will be entirely protected from local authority assessment. This share of the home will therefore be secured as family inheritance.
- A local authority may attach a lower value than the ordinary market value to the half share of the property that is still in the surviving spouses name, as the split ownership of the property will reduce the property's market value.
- The home is not held in the name of a relative and is thus protected from the risks that attach to a relatives divorce, bankruptcy or death.

- The surviving spouse can still benefit from the income from the whole of the property (whether rental or sale income) if the property is rented/sold after the surviving spouse has entered into care.

2. Disadvantages

- This scheme is only effective for those who are married, cohabiting or in a civil partnership.
- The scheme is only effective if a person is required to enter into care after their spouse has died. If both spouses are alive and both enter into care then their respective shares of the property will be taken into account in their respective assessments, thus negating the effectiveness of the scheme.
- The scheme can only protect the beneficial share of the spouse who has died. As has been stated, this will usually be a 50% share of the property.

Whilst this scheme may only protect a beneficial share of a property, upon the scheme coming into effect that share is guaranteed to be protected from a local authority assessment. It matters not what the value of the protected share amounts to, nor what the motives were for putting the scheme into place initially. This scheme therefore amounts to perhaps the safest scheme for someone wishing to put a home protection scheme in place.

The next Section of this Guide will look at how to make an appointment.

Section

4

Making an Appointment

If you would like to discuss the issues raised in this Guide further then please contact a member of our team: **Chris Kelly**, **Jenna James** or **Sigourney Rutkowski** who will be happy to do so.

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